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12  
13 **UNITED STATES DISTRICT COURT**  
14 **NORTHERN DISTRICT OF CALIFORNIA**  
15 **SAN FRANCISCO DIVISION**

16 AUSTIN MILLIKEN,

17 Plaintiff,

18 v.

19  
20 BANK OF AMERICA N.A.,

21 Defendant.

No. 3:23-cv-3709

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 For his complaint against the defendant, Plaintiff, on his own behalf and on behalf of all  
2 others similarly situated, alleges as follows.

3 **I. INTRODUCTION**

4 1. It is a well-established rule that credit card issuers may profit from high credit card  
5 interest rates only if they are transparent with cardholders about how those rates operate *and* the rates  
6 are calculated and imposed to conform with, among other things, the Truth in Lending Act (TILA),  
7 the bedrock federal consumer protection law that regulates the credit card industry.

8 2. Plaintiff brings this action because Bank of America violated that rule by wrongfully  
9 imposing excessive interest charges on their cardholders in contravention of the Truth in Lending  
10 Act.

11 3. The defendant is among the largest and most successful credit card issuers in  
12 America. Just in the past few years, it has earned billions of dollars in revenue from its credit card  
13 business.

14 4. From the nearly \$200 billion in income earned by credit card issuers each year,  
15 income derived from interest charged to cardholders is among the most lucrative income streams to  
16 card issuers like Bank of America.

17 5. The massive income generated by high, double-digit interest rates imposed on  
18 cardholders—combined with the power of compound interest—creates an incentive for card issuers,  
19 including the defendant, to increase interest rates whenever possible. Profits are especially easy to  
20 generate if credit card issuers can increase their cardholders’ interest rates faster than the borrowing  
21 rates in the marketplace.

22 6. To rein in abusive interest rate practices of credit card issuers, Congress strengthened  
23 the Truth in Lending Act by enacting the Credit Card Accountability, Responsibility, and Disclosure  
24 Act of 2009 (the “CARD Act”).

25 7. The CARD Act amendments to TILA prohibit credit card companies from raising  
26 interest rates without advanced notice, and even then, only allow interest rate increases to apply to  
27 future transactions.





1 practice of raising interest rates above the rate cardholders signed up for and imposing those  
2 increased rates on all card transactions—past, present, and future.

3 25. TILA prohibits a card issuer from raising interest rates on credit cards without 45 days  
4 advanced notice, with the rate increase permitted to take effect no sooner than 15 days following  
5 notice.<sup>1</sup>

6 26. Even with advanced notice, the CARD Act amendments limit the application of new,  
7 increased interest rates, providing that “[i]n the case of any credit card account under an open end  
8 consumer credit plan, no creditor may increase any annual percentage rate, fee, or finance charge  
9 applicable to any outstanding balance . . . .”<sup>2</sup>

10 27. The CARD Act thus brought a legal distinction into credit card charging practices,  
11 allowing “advanced notice” interest rate increases to apply to *future* card transactions, while defining  
12 *existing* (or “outstanding”) balances as “protected balances” to which the increased rates could not be  
13 applied.

14 28. The CARD Act generally allows rate increases only with advanced notice and then  
15 only on *future* transactions.

16 29. A card issuer can avoid this so-called protected balance rule only if it can carry the  
17 burden of proving it has complied with the requirements of one or more of the limited, defined  
18 exceptions.

19 30. Relevant here, the CARD Act creates a narrow exception for “an increase in a  
20 variable annual percentage rate in accordance with a credit card agreement that provides for changes  
21 in the rate according to operation of an index that is not under the control of the creditor and is  
22 available to the general public.”<sup>3</sup>

23 31. In other words, defendant Bank of America may increase the interest rates on its  
24 credit cards without the statutory notice only if its credit card agreements and practices qualify for  
25

26  
27 <sup>1</sup> 15 U.S.C. § 1637(i)(1); 12 C.F.R. § 1206.55(b)(3).

<sup>2</sup> 15 U.S.C. § 1666i-1(a).

28 <sup>3</sup> 15 U.S.C. § 1666i-1(b)(2).

1 this limited exception. This requires that the rate automatically increases, *i.e.* “according to operation  
2 of an index.”

3 32. For example, if an issuer qualifies for this exception on a particular credit card, the  
4 interest rate on that card could automatically fluctuate with the Prime Rate. In that case, the  
5 proprietary fixed rate established in the cardholder agreement (*e.g.*, proprietary fixed rate: 15.00%)  
6 would combine with the variable index rate (*e.g.*, Prime Rate or another third-party published index  
7 rate: 5.00%) to determine a total variable annual percentage rate (*e.g.*, 15.00% + 5.00% = 20.00%).

8 33. The defendant includes the Prime Rate in its variable rate formulas. The Prime Rate  
9 has more than doubled since March 2022 and is now at 8.25%, the highest in more than a decade.  
10 Beginning on March 17, 2022, the Prime Rate increased 0.25% to a rate of 3.50%. Since March  
11 2022, there have been ten uninterrupted increases in the Prime Rate over 14 months. The Prime Rate  
12 increased 4.0% in 2022 and another 0.75% so far in 2023, including the latest Prime Rate increase on  
13 May 4 which brought the rate up to the current rate, 8.25%.

14 34. Since March 2022, the defendant has used the increase in the Prime Rate as a pretext  
15 for its unlawful imposition of excessive interest rates on its credit cards.

16 35. These unlawful interest rate increases have generated untold millions for Bank of  
17 America, which has so far imposed ten interest rate increases on its cardholders over the period.

## 18 **V. ALLEGATIONS**

19 36. The CARD Act amendments to TILA include a general prohibition on raising interest  
20 rates on credit cards without advance notice and protect outstanding credit card balances from such  
21 increases. Despite this prohibition, Bank of America has, since March 2022, unlawfully raised  
22 interest rates on its credit cards without advanced notice and then improperly imposed those rates on  
23 existing balances.

24 37. Bank of America applies variable annual percentage rates for purchases made on its  
25 credit cards. Per its cardmember agreement, Bank of America claims to rely on a daily periodic rate  
26 to impose interest every day.

27 38. Despite provisions in its card agreements attesting to the use of daily periodic rate  
28 calculations, and even though TILA prohibits (a) increasing rates without notice and (b) imposing

1 increased rates on outstanding balances, Bank of America has, since March 2022, increased its credit  
2 card rates without notice and applied those rates to cardholders' outstanding balances.

3 39. Defendant's proprietary operations, including those that increase and retroactively  
4 impose daily interest rates, are unlawful repricing schemes explicitly prohibited by TILA.

5 40. Rather than raising rates only prospectively and "according to operation of an index,"  
6 Bank of America retroactively imposes an increased variable interest rate for *the entire calendar*  
7 *month within the billing period* during which its variable interest rate changes. As its cardholder  
8 agreements provide: "An increase...in the index will cause a corresponding increase...in your  
9 variable rates on the first day of your billing cycle that begins in the same month in which the index  
10 is published."

11 41. In other words, rather than raise its rates "according to operation of an index," Bank  
12 of America imposes its own proprietary operation for interest rate increases upon a cardholder  
13 balance within each billing period, including imposing daily interest charges on days when the *new*  
14 rate did not yet exist.

15 42. Plaintiff Milliken is a consumer credit cardholder of a card issued by defendant Bank  
16 of America. During the relevant period, Bank of America—through its proprietary operations—  
17 increased the variable interest rate on his credit card ten times without ever providing the required  
18 advance notice of the respective rate changes.

19 43. For several months during the relevant period, Bank of America imposed an increased  
20 interest rate on his protected balances before any change in the Prime Rate, resulting in excessive  
21 and unlawful interest charges on his account. These interest rate changes and charges violate the  
22 CARD Act. The sequence of unlawful variable interest rate increases imposed on Plaintiff Milliken's  
23 account over the past fourteen months have resulted in significant economic damage to him.

24 44. As these allegations make plain, the defendant's credit card interest rate increases  
25 since March 2022 have not been implemented in accordance with TILA or with a credit card  
26 agreement that provides for increases in the interest rate according to the operation of an index.

27 45. Defendant Bank of America designed and adopted proprietary interest rate calculation  
28 models that are not permitted under TILA, unlawfully imposed as they have been without the

1 required notice and upon outstanding balances carried by Plaintiff and the proposed Class and  
2 Subclass.

3 46. Defendant has unlawfully raised interest rates on its credit cards ten times over  
4 fourteen months in direct violation of TILA and the requirements of its CARD Act amendments.  
5 Further increases to the Prime Rate are expected, meaning the defendant will implement further  
6 unlawful rate increases unless this Court grants relief.

7 **VI. CLASS ALLEGATIONS**

8 47. Plaintiff brings this proposed class action on behalf of himself and, under Rules 23(a),  
9 23(b)(2) & 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of himself and both a  
10 nationwide class and a California subclass:

11 *All Bank of America consumer credit card cardmembers who carried a*  
12 *card balance from at least one billing period to another between*  
*March 2022 and today on a variable rate credit card (the “Class”).*

13 *All Bank of America consumer credit card cardmembers who carried a*  
14 *card balance from at least one billing period to another between*  
15 *March 2022 and today on a variable rate credit card while a resident*  
*of the State of California (the “Subclass”).*

16 48. Excluded from this proposed class are the defendant; defendant’s affiliates and  
17 subsidiaries; defendant’s current or former officers and directors; defendant’s current employees,  
18 agents, or other representatives; the district judge and magistrate judge to whom this case is assigned  
19 and those judges’ immediate families.

20 49. Plaintiff reserves the right to revisit the definition of the Class and Subclass upon  
21 review of information learned through further investigation or discovery.

22 50. This action should proceed as a class action because Plaintiff seeks injunctive relief  
23 that will apply to the Classes as wholes and further because Plaintiff will prove the elements of his  
24 damages claims with common evidence.

25 51. The allegations here satisfy each of the requirements of Rule 23, in relevant parts.

26 52. *Numerosity:* The proposed Class and Subclass include many millions of Bank of  
27 America credit cardholders across America who carried debit balances from one billing period to  
28

1 another during the relevant period. The members of the Class and Subclass are so numerous and  
2 geographically dispersed that individual joinder of all Class members is entirely impracticable.

3 53. *Commonality and Predominance*: Questions of law and fact are common to the claims  
4 of the Plaintiff and members of the Class and Subclass; these common questions predominate over  
5 any conceivable questions affecting only individual Class members. These common issues include,  
6 but are not limited to:

- 7 (a) whether Bank of America engaged in the conduct alleged in this complaint;  
8 (b) whether Bank of America has failed to comply with the CARD Act  
9 requirements of the Truth in Lending Act by increasing credit card interest  
10 rates without advanced notice and on protected balances during the relevant  
11 period;  
12 (c) whether Bank of America uses a proprietary methods for applying interest rate  
13 increases outside the protection of the “variable rate” exception to the  
14 advanced notice and protected balance requirements of the CARD Act;  
15 (d) whether Bank of America failed to consistently calculate and impose daily  
16 compounded interest;  
17 (e) whether Class members are entitled to injunctive relief, and if so, in what  
18 form;  
19 (f) whether Class members are entitled to damages, and if so, in what amount;  
20 (g) whether the defendant’s practices violate the California Unfair Competition  
21 Law.

22 54. *Typicality*: Plaintiff’s claims are typical of the claims of all members of the Class and  
23 Subclass because, among other things, all Class and Subclass members were comparably and  
24 similarly injured by the defendants’ wrongful conduct. Plaintiff, like members of the Class and  
25 Subclass, was charged excessive, retroactive, unlawful interest as the product of uniform practices by  
26 Bank of America with respect to all credit cardholders.

27 55. *Adequacy*: Plaintiff will represent and protect the interests of the proposed Class and  
28 Subclass both adequately and fairly. Plaintiff has retained counsel that is uncommonly qualified in  
this area, both competent and vastly experienced in complex class action litigation. Plaintiff has no  
interests that are antagonistic to those of the proposed Class and Subclass and his interests do not  
conflict with the interests of the proposed Class and Subclass members he seeks to represent.





1 the members of the proposed California Subclasses all monies that the defendant acquired through  
2 unfair and unlawful competition, per Cal. Bus. & Prof. Code § 17203, and provide such relief as set  
3 forth below.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff respectfully requests the following relief on his own behalf and on  
6 behalf of all those similarly situated:

7 A. That the Court certify the proposed Class and Subclass and appoint Plaintiff as Class  
8 representative and his counsel as Class counsel for both;

9 B. That the Court award Plaintiff and the proposed Class and Subclass all appropriate  
10 relief, to include, but not limited to, actual damages, punitive and statutory damages, restitution, and  
11 injunctive relief prohibiting the defendant from engaging in the wrongful conduct alleged here;

12 C. That the Court grant such additional orders or judgements as may be necessary to  
13 remedy or prevent the unlawful practices complained of here;

14 D. That the Court award Plaintiff and the proposed Class and Subclass reasonable  
15 attorneys' fees, costs, and pre-and-post-judgement interest; and

16 E. That the Court award Plaintiff and the proposed Class and Subclass any other  
17 favorable relief that may be available and appropriate under federal or state law or at equity.

18 **JURY TRIAL DEMANDED**

19 Plaintiff demands a trial by jury on all issues so triable.  
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1 DATED this 26th day of July, 2023.

Respectfully submitted,

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# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Bank of America, American Express Hit with Class Actions Over Allegedly Illegal Interest Rate Charges](#)

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