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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,

Plaintiff,

v.

BMW FINANCIAL SERVICES NA, LLC,

Defendant.

Civil Action No.

COMPLAINT

Plaintiff, the United States of America (the “United States”), by its undersigned attorneys, files this Complaint and alleges as follows:

INTRODUCTION

1. The United States brings this action under the Servicemembers Civil Relief Act (“SCRA”), 50 U.S.C. §§ 3901-4043, against BMW Financial Services NA, LLC (“Defendant”) for violating the SCRA by failing to refund, on a *pro rata* basis, lease amounts – in the form of capitalized cost reduction (“CCR”) – paid in advance by servicemembers who lawfully terminated their automobile leases upon receipt of qualifying military orders. *See* 50 U.S.C. § 3955.

2. The purpose of the SCRA is to provide servicemembers with protections to enable them to devote their entire energy to the defense needs of the Nation and to protect their civil rights during military service. *See* 50 U.S.C. § 3902. One of those protections is the right of a lessee to terminate a motor vehicle lease without penalty at any time: (1) after entering military service, if their orders call for at least 180 days of service; (2) after receiving qualifying military orders that permanently reassign the servicemember to another location; or (3) after receiving military orders to deploy for at least 180 days. *See* 50 U.S.C. § 3955(b)(2).

3. Within 30 days of the effective date of the lease termination, the lessor must refund any lease amounts that the servicemember paid in advance to cover a period occurring after the effective date of the lease termination. *See* 50 U.S.C. § 3955(f).

4. A lessor who fails to refund to a servicemember any prepaid lease payments for the period after lease termination violates that servicemember’s federally protected rights under the SCRA.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331, 1345, and 50 U.S.C. § 4041.

6. Defendant is a Delaware limited liability company, administered from, and with a principal place of business at, 300 Chestnut Ridge Road, Woodcliff Lake, New Jersey.

7. Venue is proper in this jurisdictional district under 28 U.S.C. § 1391(b) because Defendant's principal place of business is in the District of New Jersey, and Defendant conducts business within the District of New Jersey.

DEFENDANT

8. Defendant provides leasing, retail, and commercial finance services for dealers and customers of BMW, MINI, and Rolls-Royce. It is a subsidiary of BMW North America and was formed in 1993 to support its parent's sales and marketing efforts in the United States. Defendant offers leases for BMW, MINI, and Rolls-Royce vehicles through its dealers. According to Defendant's website, Defendant has total assets in excess of \$24 billion.

FACTUAL ALLEGATIONS

9. Leasing is a popular option for consumers seeking an automobile. When consumers lease automobiles, they are allowed use of the vehicle for a specified period of time, during which the consumer (or lessee) makes monthly payments. The monthly lease payments include payment for possession and use of the vehicle, as well as any up-front costs that have been financed. At the conclusion of the lease period, the consumer usually has the option either to return the vehicle to the dealership or to purchase the vehicle outright.

10. Often, the lessee contributes an up-front monetary amount at lease signing, in the form of a cash payment, credit for a trade-in vehicle, or rebates or other credits. A portion of this

up-front amount is applied to the first-month's rent, and it may also be applied to certain up-front costs. The remainder, which is called the capitalized cost reduction ("CCR") amount, operates to reduce the monthly payment the lessee must make over the term of the lease.

11. Many servicemembers, both active duty and members of the Reserves or National Guard, have leased vehicles from Defendant. Since 2011, Defendant has received hundreds of requests from servicemembers to terminate their motor vehicle leases under Section 3955 of the SCRA, including many instances involving leases where the servicemember provided CCR amounts in the form of cash payments or vehicle trade-in credits. In such instances, Defendant's policies do not provide for the refund of any portion of servicemembers' CCR amounts, and Defendant has not, in practice, provided refunds of any portion of servicemembers' CCR amounts.

Air Force Senior Master Sergeant Steck

12. In October 2014, Kristi Steck, then a senior master sergeant (SMSgt) in the U.S. Air Force stationed at Andrews Air Force Base in Maryland, leased a 2015 BMW 328i from Defendant.

13. At the time of lease signing, SMSgt Steck received a credit of \$4,160 for the trade-in of her previous vehicle, plus a rebate credit of \$500. After applying \$497.55 to the first month's payment, she paid CCR in the amount of \$4,162.45. The CCR acted to reduce her monthly lease payment to less than it would have been without the CCR.

14. At the time of lease signing, the salesperson informed SMSgt Steck that she would receive a refund of a portion of her deposit if she received military orders requiring a change of station.

15. SMSgt Steck made regular monthly lease payments for the next ten months.

16. In June 2015, SMSgt Steck received permanent change of station (“PCS”) orders from the Air Force ordering her to relocate to Japan.

17. Accordingly, SMSgt Steck contacted Defendant to terminate her lease prior to its expiration pursuant to the SCRA, providing written notice of termination and a copy of her PCS orders. Defendant allowed her to terminate the lease, but denied her request for a partial refund of the CCR amount after she returned the vehicle.

18. Despite repeated requests by SMSgt Steck for a refund, Defendant refused to refund any portion of her CCR payment.

19. In September 2015, SMSgt Steck reported to her new assignment, where she will be serving until September 2018.

Air Force Technical Sergeant Menard

20. In February 2015, Technical Sergeant (TSgt) Andrew Menard, who was also stationed at Andrews AFB, leased a 2015 BMW 328i from Defendant.

21. The lease included an amount due at signing of \$5,500, which included \$5,000 in trade-in value for his previous vehicle and a \$500 rebate credit. After applying \$486.10 to the first month’s payment, TSgt Menard paid CCR in the amount of \$5,013.90. The CCR acted to reduce his monthly lease payment to less than it would have been without the CCR.

22. TSgt Menard made regular monthly lease payments for approximately seven months.

23. In September 2015, TSgt Menard received orders from the Air Force to deploy to Afghanistan the following month for 186 days.

24. After receiving these orders, TSgt Menard contacted Defendant to terminate his lease prior to its expiration pursuant to the SCRA. Defendant allowed him to terminate the lease,

but did not refund TSgt Menard any part of his CCR amount after he returned the vehicle. TSgt Menard asked Defendant about receiving a refund of pre-paid amounts, but Defendant told him that they were not refundable.

25. TSgt Menard deployed to Afghanistan in October 2015 for approximately six months.

United States' Investigation

26. On August 24, 2016, the Department of Justice notified Defendant that it was opening an investigation into Defendant's leasing practices, and requested documents from Defendant, including Defendant's SCRA policies and procedures, documents related to lease termination requests under the SCRA, and files related to SMSgt Steck's and TSgt Menard's leases.

27. Defendant provided the requested information to the Department of Justice, including policy documents and documents related to servicemembers' lease termination requests since 2011. The documents confirmed that Defendant does not, as a matter of policy or practice, refund any portion of CCR amounts to servicemembers who terminate their motor vehicle leases under Section 3955 of the SCRA.

SERVICEMEMBERS CIVIL RELIEF ACT VIOLATIONS

28. The SCRA provides that "[t]he lessee on a [motor vehicle] lease . . . may, at the lessee's option, terminate the lease at any time after . . . the date of the lessee's military orders" 50 U.S.C. § 3955(a)(1). This option applies to servicemembers who "while in military service, execute[] the lease and thereafter receive[] military orders— (i) for a permanent change of station— (I) from a location in the continental United States to a location outside the continental United States; or (II) from a location in a State outside the continental United States to any location outside

that State; or (ii) to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 180 days.” 50 U.S.C. § 3955(b)(2). The same option also applies to leases “executed by or on behalf of a person who thereafter and during the term of the lease enters military service under a call or order specifying a period of not less than 180 days (or who enters military service under a call or order specifying a period of 180 days or less and who, without a break in service, receives orders extending the period of military service to a period of not less than 180 days).” *Id.*

29. Further, “[r]ents or lease amounts paid in advance for a period after the effective date of the termination of the lease shall be refunded to the lessee by the lessor . . . within 30 days of the effective date of the termination of the lease.” 50 U.S.C. § 3955(f).

30. Defendant has engaged in a pattern or practice of violating Section 3955(f) of the SCRA, 50 U.S.C. § 3955(f), by failing to refund any portion of CCR amounts from cash payments or vehicle trade-in credit to eligible servicemembers who terminated their motor vehicle leases under Section 3955 of the SCRA.

31. Defendant’s failures to refund any portion of CCR amounts from cash payments or vehicle trade-in credit to SMSgt Steck, TSgt Menard, and other servicemembers who terminated their motor vehicle leases under Section 3955 of the SCRA raise issues of significant public importance.

32. SMSgt Steck, TSgt Menard, and 490 other servicemembers who terminated their motor vehicle leases under Section 3955 of the SCRA since August 24, 2011 were not refunded CCR amounts (from cash payments or vehicle trade-in credit) that reduced amounts due after lease signing. Those CCR amounts should have been refunded on a *pro rata* basis within 30 days of

lease termination. These 492 servicemembers are “person[s] aggrieved” under 50 U.S.C. § 4041(b)(2) and have suffered damages as a result of Defendant’s conduct.

33. Defendant’s conduct was intentional, willful, and taken in disregard for the rights of servicemembers.

RELIEF REQUESTED

WHEREFORE, the United States requests that the Court enter an ORDER that:

1. Declares that Defendant’s conduct violated the Servicemembers Civil Relief Act, 50 U.S.C. § 3901, *et seq.*;
2. Enjoins Defendant, its agents, employees, and successors, and all other persons and entities in active concert or participation with Defendant from:
 - a. failing to refund, on a *pro rata* basis following a servicemember’s lease termination under Section 3955 of the SCRA, 50 U.S.C. § 3955, Capitalized Cost Reduction amounts (from cash payments or trade-in credit) that reduced amounts due after lease signing;
 - b. failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, the 492 identified victims of Defendant’s illegal conduct to the positions they would have been in but for that illegal conduct; and
 - c. failing or refusing to take such affirmative steps as may be necessary to prevent the recurrence of any illegal conduct in the future and to eliminate, to the extent practicable, the effects of Defendant’s illegal conduct;
3. Awards appropriate monetary damages under 50 U.S.C. § 4041(b)(2) to the 492 identified victims of Defendant’s violations of the SCRA; and

4. Assesses civil penalties against Defendant under 50 U.S.C. § 4041(b)(3) in order to vindicate the public interest.

The United States further requests such additional relief as the interests of justice may require.

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