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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ORANGE

<p>DARYL D. HENRY, individually and on behalf of all others similarly situated,</p> <p>Plaintiff,</p> <p>v.</p> <p>STRUCTURED INVESTMENTS CO., LLC, a California Limited Liability Company, RONALD STEINBERG, individually and d/b/a Retired Military Financial Services, and STEVEN P. COVEY, individually and d/b/a Retired Military Financial Services</p>	<p>Case No.</p> <p>COMPLAINT FOR DAMAGES, RESTITUTION, UNJUST ENRICHMENT AND DECLARATORY AND INJUNCTIVE RELIEF</p> <p>CLASS ACTION</p>
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1. Plaintiff Daryl D. Henry (“plaintiff” or “Mr. Henry”) is a retired and disabled veteran of the United States Armed Forces and brings this action on behalf of himself and others similarly situated stating claims for (1) Declaratory Relief, Code of Civil Procedure § 1060, (2) the “Unfair Practices Act,” Business & Professions Code § 17200 *et seq.*, (3) the “Usury Law”, Stats. 1919, p. lxxxiii, Deering's Uncod. Initiative Measures & Stats. 1919-1, (4) the “Consumer Legal Remedies Act”, Civil Code § 1750 *et seq.*, and (5) unjust enrichment and money had and received. All of these causes of action arise from defendants’ pattern and practice of entering into transactions with retired and disabled veterans which contain numerous unconscionable and otherwise unenforceable provisions, and which are disguised loan transactions bearing usurious effective interest rates. Further, in connection with such transactions, defendants’ documents

purport to obtain, in effect, assignment of retired military benefits which are unenforceable in light of the anti assignment provisions found at 37 U.S.C. §701(c) and 38 U.S.C. § 5301(a)(1); (3)(A) and (C).

2. Defendants are engaged in the business of entering into loan transactions, which they denominate “Annuity Utilization Contracts,” with retired veterans. Under the terms of these contracts, defendants loan the veteran a sum of money in exchange for a promise by the veteran to make future payments secured by the veteran’s retired or disability military payments. Defendants attempt to disguise the nature of these transactions by inserting into the form contracts they have drafted a recital that the transaction “is not a loan” However, the transactions are in substance and under law loans from defendants to the veteran. The terms of these loans are usurious and otherwise unfair and unlawful. For example, the imputed interest rate on the transaction between defendants and Mr. Henry is between 26.8% and 30.5%, depending upon method of calculation.

3. The assignment of military pension pay of enlisted military personnel upon retirement is prohibited by 37 U.S.C. §701(c). Similarly, the assignment of disability benefits to all military veterans regardless of rank is illegal under 38 U.S.C. § 5301(a)(1), (3)(A) and (C). The contract between defendants and Mr. Henry, and the similar contracts between defendants and the class members, purport to obtain, in effect, an illegal assignment of retired military pension and disability benefits in violation of these provisions. As a result, these contracts are unenforceable as a matter of law.

4. In addition, defendants’ practices of requiring plaintiff and class members to enter into contracts which in effect assign their military benefits in violation of federal law, and their representations intended to induce veterans to enter into these contracts and assign their benefits, constitute unfair, deceptive and unconscionable acts or practices in the conduct of business, trade or commerce, barred by state law.

PARTIES

5. Plaintiff, Daryl D. Henry is a retired enlisted military veteran residing in Laurel, Maryland. Mr. Henry retired from the United States Navy as a Disbursing Clerk, First Class. Mr. Henry retired on November 30, 2000 after 20 years of military service with a retirement income of \$1,083 per month.

6. Defendant Structured Investments Co., LLC (“SICO”) is a California limited liability company with its principal place of business, as registered with the California Secretary of State, at 12304 Santa Monica Blvd, Suite 107, Los Angeles, California. SICO funds high-interest loans to disabled military veterans and to retired enlisted veterans throughout the United States. On information and belief, SICO’s current office location is in Orange County, California.

7. Defendant Ronald Steinberg is an individual who conducts business, with co-defendant Covey, under the name of Retired Military Financial Services located at the same street address as SICO. Upon information and belief, Steinberg is a California resident.

8. Defendant Steven P. Covey is an individual who conducts business, with co-defendant Steinberg, under the name of Retired Military Financial Services located at the same street address as SICO. Upon information and belief, Covey is a California resident.

9. Steinberg and Covey, individually and doing business as Retired Military Financial Services (collectively “RMFS”), solicit and arrange transactions which are the legal equivalent of high-interest loans by SICO to disabled military veterans and to retired enlisted veterans throughout the United States. RMFS does so as part of transactions which also purport to assign, in effect, retired military pension and disability benefits in violation of applicable law. On information and belief, Steinberg and Covey are managing members of defendant SICO and share an identity of financial interests with that entity.

10. Venue is proper in this County because, among other reasons, the contractual

documents prepared by defendants and entered into by plaintiff and the class members specifies this Court as a proper venue for litigating issues pertaining to the terms of those documents.

GENERAL STATEMENT OF FACTS

11. Defendants extend credit to disabled military veterans and retired enlisted veterans using standardized form contracts. Defendants label their form contracts as “Annuity Utilization Agreements,” deny that they are loan documents and characterize the transactions as a “purchase” of the veterans’ future right to military benefits.

12. However, defendants’ transactions involve – as with any loan – the exchange of an upfront payment for a contractual promise of repayment over time. The transactions also include other indicia of a loan such as the review of credit risk prior to extending the loan, standard loan underwriting assessment, the reservation of a security interest in property, the required guarantee of repayment over time and the requirement that the borrower obtain life insurance and commit the insurance proceeds to be available for repayment of the outstanding balance should the debtor die prior to full repayment. The true nature of the transaction is that of a loan under the law and in fact and in substance.

13. Defendants advertised or advertise their service to veterans in return for the veterans’ promise to redirect their monthly pension and/or disability benefits directly to SICO. RMFS advertises through nationally distributed Armed Forces newspapers for the benefit of Steinberg, Covey and SICO.

14. The following describes the typical transaction between SICO/RMFS and the veterans who comprise the members of the class alleged in this complaint:

- a. In response to defendants’ nationally distributed advertisements, veterans contact RMFS to inquire about their loan product. One of defendants’ employees obtains information concerning the prospective borrower’s retirement or disability status, rank and pay grade upon retirement. Based upon this information, defendants quote the employee a proposed minimum and maximum loan amount. The larger the principal of the loan, the longer the loan term.

- a. The borrower is then required to send verification of the amount of his/her retirement or disability benefits, by supplying RMFS with income tax returns, pay checks or stubs and evidence of other income and financial status in order to obtain the loan approval. After RMFS receives verification of the prospective borrower's income and the other financial information. Thereafter, RMFS (now acting as SICO) provides the loan documents to the prospective borrower. The documents are drafted to name SICO as the contracting party.
- b. The borrower cannot select a minimum amount of money to be loaned. All of the loan terms are dictated by the defendants. The defendants base the required loan amount upon the military retirement or disability benefit amount and will not allow a borrower to borrow less than that required amount.
- c. The defendants forward the loan documents to the veteran and then process the loan check only after the documents are signed and returned. Included within these documents is a form, which must be signed by the veteran, instructing the Department of Defense or Veteran's Administration to start sending the veteran's retirement or disability payments to SICO.
- d. Before sending the check for the principal amount, the defendants subtract amounts equal to a number of annual life insurance premiums for the entire or a substantial portion of the term of the loan. The veteran must prepay the premium, even if it has not yet become due.
- e. In the agreements, defendants assert that they are obtaining a security interest in the veteran's military retirement or disability benefits. In essence, defendants paradoxically claim they purchase the veteran's benefits and also have a security interest in these benefits.
- f. Defendants also require veterans to "collaterally assign" the life insurance policy to them.

19. The defendants' Annuity Utilization Agreement contains numerous provisions which are unconscionable, illegal or otherwise unenforceable, including language purporting to:

- a. illegally bind borrowers' heirs;
- b. effect a waiver of defenses; and
- c. threaten borrowers with criminal fines and imprisonment for failure to repay the loan.

20. At all relevant times alleged in this matter, each defendant acted in concert with, with the knowledge and approval of and/or as the agent of the other defendants within the course and scope of the agency, regarding the acts and omissions alleged.

ALLEGATIONS RELATING TO PLAINTIFF

21. Plaintiff Daryl Henry is a resident of Arundel County, State of Maryland.

22. Mr. Henry served for twenty years in the United States Navy attaining the rank of Disbursing Clerk, First Class.

23. On November 30, 2000, Mr. Henry retired from the U.S. Navy.

24. Sometime thereafter, Mr. Henry saw an advertisement placed by RMFS in the *Navy Times* advertising a way for military personnel to obtain cash advances.

25. In November, 2002 Mr. Henry contacted RMFS and the parties began exchanging correspondence regarding the possibility of defendants providing upfront cash to Mr. Henry in exchange for his payment of a substantially larger amount over time. After eliciting information regarding Mr. Henry's military retirement benefits, checking his credit and obtaining other underwriting information, defendants informed Mr. Henry that SICO would provide him \$42,131 in cash in exchange for, among other things, Mr. Henry's promise to pay to SICO \$1,070 per month for 96 months (if all payments were timely made) or 120 months (if not).

26. On or about January 15, 2003, Mr. Henry was forwarded a document titled "Annuity Utilization Agreement" by RMFS, which provided for the exchange of upfront cash for payments over time as described in the previous paragraph above. On or about January 23, 2003, Mr. Henry executed the Annuity Utilization Agreement. This Agreement required Mr. Henry to instruct the relevant federal agencies to make direct payment of Mr. Henry's military pension and disability payments to SICO, purported to waive Mr. Henry's right to redirect such payments to any other destination, and included severe penalties should Mr. Henry so redirect any such payments prior to expiration of the term set forth in the Agreement.

27. The gross loan proceeds from the above-described transaction was \$42,995.40. In addition, Mr. Henry was required to pay \$3,456 for insurance premiums, \$864 of which was being withheld from the gross loan proceeds of \$42,995 and the remainder to be paid monthly at the rate of \$36 per month until fully paid.

28. Mr. Henry thus received \$42,131 (\$42,995 less \$864) as net loan proceeds. For such loan, Mr. Henry was required to assign his military pension in the amount of \$1,070 for a minimum of 96 months and a maximum of 120 months. To date, Mr. Henry has already paid defendants at least \$29,960 in pension payments and an additional \$1,760 for insurance premiums.

29. Over the term of the loan, Mr. Henry would repay either \$102,720 (96 months) or \$128,400 (120 months). The imputed interest rate (ignoring subsequent payments which purportedly are for life insurance) on such a loan is 26.8% (96 months) or 30.5% (120 months). If an event occurred which resulted in accelerated payment (such as the death of the veteran and early repayment from life insurance proceeds, as is envisioned in the documents drafted by defendants) the imputed interest rate would be even higher.

CLASS ALLEGATIONS

30. This action is brought as a class action pursuant to Code of Civil Procedure section 382 and Civil Code section 1781. The proposed class is defined as follows:

All retired enlisted military personnel or disabled military personnel of any rank who have entered into a transaction with defendants in which defendants paid upfront cash in return for the veteran's promise to redirect their monthly pension or disability benefits directly to defendants or any of them.

Excluded from the class are any persons who have previously obtained a judgment or settled any claims against defendants concerning the types of claims asserted herein or have previously executed releases precluding any such claims against defendants.

31. On information and belief, the class numbers in the hundreds. Joinder of all class

members is impracticable.

32. There are genuine questions of law and fact common to the class, which predominate over any individual questions. These common questions, which demonstrate a community of interest among class members, include:

- a. Whether the form transactions defendants have entered into with class members should be classified as loans under applicable law;
- b. Whether defendants' transactions involve the obtaining of an assignment of the class members' right to receive military pension benefits and, if so, whether such renders the transactions illegal and either void *ab initio* or voidable at the option of the veteran;
- c. Whether the form documents drafted by defendants and used by them in their transactions with class members contain provisions which are unconscionable and unenforceable;
- d. Whether California law should be applied in assessing the legality of defendants' transactions, regardless where the veteran resides, as stated in the form contract documents drafted by defendants;
- e. Whether defendants' conduct violates the Unfair Competition Law;
- f. Whether defendants' transactions impose interest rates in excess of the maximum rate permitted under Cal. Const. Art. XV, §1 and the Usury Law;
- g. Whether defendants' conduct violates the Consumer Legal Remedies Act;
- h. Whether defendants have been unjustly enriched by the retention of payments by class members in the manner described within;
- i. Whether defendants should be enjoined from continuing to procure the assignment of military retirement and disability pension benefits;

- j. Whether defendants should be ordered to provide restitution to the class;
- k. Whether class members are entitled to an award of damages as a result of defendants' conduct;
- l. Whether class members are entitled to disgorgement of any funds received by defendants.

33. The claims of plaintiff are typical of the claims of the class members. Each class member was subjected to the same illegal conduct of defendants, was harmed in the same way and has claims for relief under the same legal theories.

34. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has common interests with all members of the class and will vigorously protect the interest of the class through qualified counsel experienced in handling class action and consumer protection cases. Neither the named plaintiff nor class counsel has any interests which would conflict with the interests of the class members.

35. A class action is a superior method for the fair and efficient adjudication of this controversy. Most class members are unaware of the availability of legal challenge to the transactions they entered into with defendants. Moreover, given the common questions to be resolved, class litigation is the superior method of resolving these legal challenges in one proceeding, thus avoiding a multiplicity of parallel suits. A class action will avoid the possibility of inconsistent adjudications of the same legal question.

FIRST CAUSE OF ACTION

(Declaratory Relief)

36. Plaintiff incorporates by reference the above-enumerated paragraphs of the Complaint as though fully restated herein.

37. An actual and justiciable controversy exists between the parties as to their respective rights and obligations under the form document entitled "Annuity Utilization

Agreement” (the “Agreement”), which each class member has entered into with defendant SICO. Plaintiff, on behalf of the class, contends that some or all of the provisions in the Agreement are illegal, void, voidable, unconscionable and/or unenforceable. Plaintiff is informed and believes that defendants contend to the contrary.

38. Plaintiff seeks the following declarations regarding his obligations, and those of class members, under the Agreement:

- a. The transaction evidenced by the Agreement is, under law and equity, a loan, subject to applicable usury limitations on the maximum permissible rate of interest which may be charged and recovered;
- b. Defendants may not enforce or collect any amount from plaintiff or class members beyond return of the principal of the loan, because the interest rate evidenced in the Agreements with defendants exceeds the maximum permissible rate set forth in Cal. Const. Art. XV, §1;
- c. The provisions of the Agreement purporting to require plaintiff and class members to provide defendants direct access to military benefits are void and unenforceable attempt to circumvent the prohibition upon assignments of military benefits set forth in 38 U.S.C. § 5301(a) (3) (C), 37 U.S.C. § 701(c), 15 U.S.C. §§ 1601, et seq. and 16.C.F.R. § 444.2(a) (3);
- d. The provision in the Agreement purporting to increase a veteran’s repayment obligation from 96 months to 120 months if there is “any disruption, interruption or decrease in those payments caused by the [veteran]” is an unenforceable penalty clause (emphasis in original);
- e. Numerous provisions of the Agreement are unconscionable and unenforceable, including the provisions of paragraphs 2.4, 3, 5, 8, 10.6, 10.9, 12.6, 13.2, 13.3, 13.4, 14.5, 15 and portions of par. 16.

WHEREFORE plaintiff prays for relief as hereinafter set forth.

SECOND CAUSE OF ACTION
(Unfair Competition Law,
Bus. & Prof. Code §17200 et seq.)

39. Plaintiff incorporates the allegations of all the foregoing paragraphs by reference, as if fully set forth herein.

40. Defendants' practice of requiring Plaintiff and class members to assign their right to receive military pension and disability benefits is expressly prohibited by federal law as alleged herein. Moreover, defendants' transactions involve the assessment of interest which exceeds the maximum rate set forth in Cal. Const. Art. XV, §1. Therefore, defendants practices constitute unlawful competition under the "unlawful prong" of the Unfair Competition Law.

41. The acts complained of herein, including the disguising of loan transactions as non-loan transactions, the insertion into contracts of numerous unconscionable and unenforceable terms, the presentation of misleading descriptions of the purported benefits of its transactions to veterans, and the charging of imputed interest in excess of the legally permitted rate, constitute unlawful competition under the "unfair" and "fraudulent" prongs of the Unfair Competition Law. These acts offend established public policies or are immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers. Alternatively, these acts cause harm to veterans which outweigh any utility flowing from them.

42. Plaintiff has suffered injury in fact and has lost money or property as a result of defendants' acts of unfair competition.

43. On information and belief, defendants continue to engage in some or all of these unlawful acts and will continue to do so unless enjoined. As a result of these acts of unfair competition, over the last four years defendants have obtained money or property from plaintiff and class members which they should not, in equity, be permitted to retain, including but not

limited to excess interest payments. Plaintiff and the general public are entitled to injunctive relief, restitution, and other equitable relief.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

THIRD CAUSE OF ACTION

(The Usury Law)

44. Plaintiff incorporates the allegations of the foregoing paragraphs by reference, as if fully set forth herein.

45. As alleged above, plaintiff and class members have paid to defendants interest in excess of the maximum permissible rate authorized under Cal. Const. Art. XV, §1. Pursuant to the Usury Law, Stats. 1919, p. lxxxiii, Deering's Uncod. Initiative Measures & Stats. 1919-1, plaintiff and class members are entitled to repayment from defendants of treble the amount of all such interest paid within one year past.

46. The transactions entered into between defendants, on the one hand, and plaintiff and class members, on the other, were in substance loans calling for usurious rates of interest. Under the terms of these transactions, usurious interest was absolutely payable by plaintiff and class members. On information and belief, defendants willfully entered into each of the transactions with plaintiff and class members, intending to receive the interest payments called for under those transactions.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

FOURTH CAUSE OF ACTION

(Consumers' Legal Remedies Act,

Civil Code §§1750 *et seq.*)

47. Plaintiff incorporates the allegations of the foregoing paragraphs by reference, as if fully set forth herein.

48. By entering into the subject transactions with defendants involving the assignment of their military pension and disability pay, plaintiff and the class members are consumers as that term is defined in Civil Code §1761.

49. Defendants have violated Civil Code §§1770(a)(5), (14) and (19), through the acts alleged herein, thereby entitling plaintiff and members of the class to relief under Civil Code §1780 by, *inter alia*:

- a) Representing that goods or services have characteristics which they do not have or that a person has a status, affiliation or connection which he or she does not have, in violation of §1770(a)(5);
- b) Representing that a transaction confers or involves rights, remedies or obligations which it does not have or involve, or which are prohibited by law, in violation of §1770(a)(14); and
- c) Inserting an unconscionable provision in a contract, in violation of §1770(a)(19).

50. Defendants' violations of Civil Code §1770 described above present a continuing threat to class members and members of the public in that defendants are continuing to engage in these practices, is continuing to refuse to refund amounts paid by consumers and will not cease until an injunction is issued by the Court.

51. By letter dated January 14, 2005, mailed as directed in Civil Code section 1782 and received by defendants on January 24, 2005, plaintiff notified defendants of their violations of the California Consumer Legal Remedies Act and demanded that defendants provide remedies to rectify their conduct.

52. Defendants have failed to give or agree to give within a reasonable time, a sufficient remedy as set forth in California Civil Code section 1782(c) for the above-mentioned violations of law.

53. As a direct and proximate result of the aforementioned acts, plaintiff and each member of the class he represents, have suffered injury in an amount subject to proof at trial, and are entitled to recover damages pursuant to California Civil Code § 1780.

54. Plaintiff and the members of the class are entitled to an award of attorneys' fees and costs against Defendants pursuant to the provisions of Civil Code § 1780(d).

WHEREFORE, plaintiff prays for relief as hereinafter set forth.

**FIFTH CAUSE OF ACTION
(Money Had And Received
And Unjust Enrichment)**

55. Plaintiff incorporates the allegations of all the foregoing paragraphs by reference, as if fully set forth herein.

56. Defendants, by the actions alleged above, have collected money from plaintiff and class members under such circumstances that in equity and good conscience defendants cannot retain, and which in justice and fairness belongs to plaintiff and the class.

57. Within the last two years, defendants have become indebted to plaintiff and class members in the amount of all excess interest paid within that period. No part of these sums have been repaid to plaintiffs or class members.

58. As a result of defendants' violations, described above, it has unjustly enriched itself at the expense of the class. Defendants' unjust enrichment continues to accrue as it continues to engage in its unlawful business acts and practices and collect loan payments and excess interest, as described above.

59. Defendants' retention of money gained through their unlawful and deceptive practices is unjust considering the circumstances under which the funds were obtained.

60. As a result of the foregoing, plaintiff and the members of the class have been deprived of their money and suffered loss as alleged above.

61. To prevent unjust enrichment, defendants should be required to identify, account for, fully refund, and provide restitution of its ill-gotten gains including interest collected in

excess of the legal maximum, and fruits of those gains, to plaintiff and the class. Defendants should be ordered to refund all sums paid to them, together with interest thereon and pay reasonable attorneys' fees and costs.

WHEREFORE, plaintiff prays for relief as hereinafter set forth.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and others similarly situated, requests and prays that this Court enter a judgment against defendants as follows:

(a) Certifying this case as a Class Action with plaintiff as class representative and plaintiff's counsel as class counsel;

(b) Declaring the respective rights and obligations of the parties under the "Annuity Utilization Agreements";

(c) Declaring the assignment of plaintiff and those similarly situated of their military pensions void or voidable;

(d) Ordering defendants to restore to plaintiff and class members all amounts collected by defendants which may have been acquired by means of any practices found by this Court to be illegal, unfair or deceptive or otherwise prohibited by law;

(e) Permanently enjoining the Defendants from taking any assignment of the disability payments of any veteran and the pension benefits of any enlisted veteran;

(f) Awarding damages in amounts to be proven at trial;

(g) Awarding of treble the amount of all excess interest paid to defendants within the past year prior to filing of this complaint;

(h) Awarding pre-judgment interest on all other amounts awarded;

(i) Awarding attorneys fees as authorized by law;

(j) Granting such other and further relief as may be deemed just and proper in the premises.

Dated: _____

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