

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Case No. 5:22-CV-00383-M

PABLO ESPIN,	)	
NICHOLAS PADAPO,	)	
JEREMY BELL, and	)	
KEITH TAYLOR, on behalf of themselves	)	
and others similarly situated,	)	ORDER
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
CITIBANK, N.A.,	)	
	)	
Defendant.	)	
_____	)	

This matter comes before the court on Plaintiffs' Appeal of and Objections to Order Granting Motion to Compel Arbitration and Stay [DE 94]. Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(a), United States Magistrate Judge Robert B. Jones, Jr. issued an Order on March 23, 2026, granting Defendant's motion to compel arbitration and to stay the proceedings of this case. Order, DE 93. Plaintiffs filed their appeal on April 6, 2026, and Defendant filed a written response to the appeal on April 20, 2026. DE 94, 95. For the reasons that follow, the court finds a portion of the Order contrary to law and reverses that portion but, otherwise, affirms the Order to compel to arbitration certain Plaintiffs' claims and stays this proceeding as to those claims.

I. Background

All parties agree that the sole question currently before this court is whether the Military Lending Act ("MLA") bars the arbitration of Plaintiffs' claims against Defendant. No party objects to Judge Jones' recitation of the procedural background of this case, and the court recounts

it here. Plaintiffs, current or former members of our nation's military and Citibank account holders, brought this putative class action generally alleging that Citibank's benefits provided to servicemembers are “often illusory” and “[r]ather than permanently forgiving the interest and fees, Citibank retroactively takes back this benefit by imposing an interest rate penalty on servicemembers after they leave active duty and return to civilian life” in violation of the Servicemembers Civil Relief Act (“SCRA”), the Military Lending Act (“MLA”), the Truth in Lending Act (“TILA”), and the Credit CARD Act of 2009 (“CARD Act”), and in violation of state law giving rise to claims for breach of contract, breach of implied covenant of good faith and fair dealing, and breach of fiduciary duty or special trust. Plaintiffs also asserted equitable claims for accounting and constructive trust and, finally, a claim for declaratory judgment. *See generally* Compl, DE 1.

In response to the complaint, Citibank filed a motion to dismiss [DE 20] and a motion to compel arbitration [DE 22], and Plaintiffs then filed an amended complaint [DE 26], which Citibank again moved to dismiss [DE 32]. The court ultimately denied both the motion to dismiss and the motion to compel arbitration. DE 56, 58; *Espin v. Citibank, N.A.*, No. 5:22-cv-383-BO,¹ 2023 WL 6449909 (E.D.N.C. Sept. 29, 2023). Citibank filed a notice of interlocutory appeal from the order denying the motion to compel arbitration [DE 60], which automatically stayed the case pending appeal [DE 61, 64]. The Fourth Circuit on appeal ruled that the arbitration agreements were enforceable as to the SCRA claims and remanded the case with instructions to “compel arbitration in accordance with the terms of the parties' arbitration agreements, not only with respect to plaintiffs’ SCRA claims but also with respect to all other claims except those brought under the

¹ The case was subsequently reassigned from Judge Boyle to the undersigned on September 27, 2025.

MLA.” *Espin v. Citibank, N.A.*, 126 F.4th 1010, 1019 (4th Cir. 2025). The court explained that the MLA claims were excepted because the MLA “does indeed manifest a congressional intent to override arbitration,” and the other claims were included because “the plaintiffs’ only ground for avoiding arbitration of them was based on the SCRA.” *Id.* (citing 10 U.S.C. § 987(f)(4)). However, because the district court did not reach the parties’ arguments regarding the applicability of the MLA, the Fourth Circuit instructed the district court to make that determination on remand and to address any other issues on the MLA claims that the parties might raise. *Id.* at 1020. The court denied the petition for rehearing, and the mandate issued on March 5, 2025. DE 72.

Thereafter, by agreement of the parties, Plaintiffs filed the operative second amended complaint, which added another MLA claim and a state law deceptive trade practices claim [DE 82], and Citibank responded with the instant renewed motion to compel arbitration and to stay action [DE 84].

This court referred the motion to Judge Jones for disposition pursuant to 28 U.S.C. § 636(b)(1)(A). Text Ord., Nov. 17, 2025. Judge Jones granted the motion to compel, finding the MLA and its arbitration bar do not apply to Plaintiffs’ consumer credit accounts, because the accounts were opened prior to credit cards being covered by the MLA, and the regulations expressly state that the statute does not apply retroactively to such accounts. Order, DE 93 at 5-6. Judge Jones also rejected the Plaintiffs’ argument that an “extension of consumer credit” occurs not only at the inception of the account but also upon each credit transaction, and that the MLA prohibits enforcing the arbitration clause specifically against Plaintiffs Espin and Bell, because they were on active duty when this case was filed and Bell remains on active duty. *Id.* at 7-13.

II. Legal Standards

Plaintiffs ask this court to review Judge Jones’ Order pursuant to Rule 72(a) of the Federal

Rules of Civil Procedure. With the exception of dispositive matters, district courts may designate magistrate judges to hear and determine any pretrial matter pending before the district court. 28 U.S.C. § 636(b)(1)(A). The district judge may reconsider any order authorized under § 636(b)(1)(A) “where it has been shown that the magistrate judge’s order is clearly erroneous or contrary to law.” *Id.*; *see also* Fed. R. Civ. P. 72(a); *Springs v. Ally Fin. Inc.*, 657 F. App’x 148, 152 (4th Cir. 2016). “Clearly erroneous and contrary to law are not synonymous; a reviewing court assesses the *factual* portions of a Magistrate Judge’s order under the clearly erroneous standard, but reviews *legal* conclusions to determine if they are contrary to law.” *Kiser v. Truist Fin. Corp.*, 827 F. Supp. 3d 718, 724 (E.D. Va. 2026) (citation omitted) (emphasis added); *see also McCormick & Co. v. Ryder Integrated Logistics, Inc.*, 660 F. Supp. 3d 430, 433 (D. Md. 2023) (“The ‘clearly erroneous’ standard applies to factual findings, while legal conclusions will be rejected if they are ‘contrary to law.’”) (citation omitted).

“A [factual] finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” *Wall v. Rasnick*, 42 F.4th 214, 220 (4th Cir. 2022) (citation omitted). Furthermore, “the contrary to law standard is synonymous with de novo review as to questions of law.” *Kiser*, 827 F. Supp. 3d at 724 (citation omitted); *see also Stonecrest Partners, LLC v. Bank of Hampton Roads*, 770 F. Supp. 2d 778, 782 (E.D.N.C. 2011) (“contrary to law” standard permits plenary review of legal conclusions).

III. Objections

Plaintiffs contend that the Order improperly “read[s] an exception into the MLA and its implementing regulations that does not exist” and “ignores the Supreme Court’s instruction that servicemember protection statutes like the MLA must be liberally construed to protect those who

have been obliged to drop their own affairs to take up the burdens of the nation.” DE 94 at 1-2 (cleaned up). Specifically, Plaintiffs argue the order (1) disregards controlling precedent concerning the meaning of “extension of credit”; (2) improperly rewrites the MLA’s implementing regulations; (3) misreads MLA’s safe harbor regulation; and (4) forces Plaintiffs Bell and Espin into arbitration despite each Plaintiff’s active-duty status. *Id.* at 2-11. Defendant lodged no objections to the order, oppose the Plaintiffs’ argument, and contend that Judge Jones’ conclusions should not be disturbed. *See* DE 95.

IV. Analysis

No party disputes that the credit card agreements between Plaintiffs and Defendant contain an arbitration agreement, which would typically govern the disputes in this case. In the present motion, Defendant argues that the MLA only applies to military servicemembers who were on active duty, as defined by statute, at the time they opened their credit card accounts, if their credit card accounts were opened on or after October 3, 2017. Plaintiffs counter that Defendant relies on irrelevant or improper regulations and case law to interpret the MLA.

A. Order

Plaintiffs do not object to Judge Jones’ recitation of the legal standards governing arbitration agreements nor to his description of relevant portions of the MLA (DE 93 at 3-5); the court finds no error in Judge Jones’ reliance on these standards. However, the court sustains Plaintiffs’ objection concerning the Order’s interpretation of the MLA’s provision governing arbitration and finds that the plain language of the provision resolves the issue raised in this matter.

Plaintiffs contend, specifically for Plaintiffs Espin’s and Bell’s claims, that the following MLA provision overrides any agreement to arbitrate:

Notwithstanding section 2 of title 9 [*i.e.*, the FAA], or any other Federal or State law, rule, or regulation, no agreement to arbitrate any dispute involving the

extension of consumer credit shall be enforceable against any covered member or dependent of such a member, or any person who was a covered member or dependent of that member when the agreement was made.

Espin, 126 F.4th at 1019 (quoting 10 U.S.C. § 987(f)(4)).

Judge Jones found that because § 987(f)(4) applies only to disputes involving “the extension of consumer credit,” and that such extension occurs at the inception of a credit card account, which, for all Plaintiffs, occurred before the MLA’s effective date, “the MLA and its arbitration bar do not apply regardless of any subsequent changes to Plaintiffs’ duty status.” DE 93 at 13. Plaintiffs object, arguing that “the Order would deny Plaintiffs Bell and Espin their day in court even though they meet Congress’s definition of ‘covered member.’” DE 94 at 11. Plaintiffs contend that “[t]he Order reached this result by relying on its erroneous reading of the MLA regulations,” but the term “covered member” is defined by statute, not the regulations. *Id.* The court agrees; under the plain language of the statute, the court finds on de novo review that an order compelling any Plaintiff or putative class member who is unquestionably a “covered member” under the MLA to arbitration of a dispute concerning the extension of credit violates the MLA.

According to the Fourth Circuit, it is a cardinal rule of statutory construction that, when interpreting the meaning of a statute, courts begin with the text of the statute itself and must “assume that the legislative purpose is expressed by the ordinary meaning of the words used.” *Air Line Pilots Ass’n, Int’l v. U.S. Airways Grp., Inc.*, 609 F.3d 338, 341 (4th Cir. 2010) (quoting *Am. Tobacco Co. v. Patterson*, 456 U.S. 63, 68 (1982)). “It is well established that when the statute’s language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms.” *DIRECTV Inc. v. Nicholas*, 403 F.3d 223, 225 (4th Cir. 2005) (quoting *Lamie v. United States Tr.*, 540 U.S. 526, 534 (2004)).

The Fourth Circuit instructs that, in interpreting the plain language of a statute, courts must “give the words of a statute their ordinary, contemporary, common meaning, absent an indication Congress intended them to bear some different import.” *Id.* (quoting *Williams v. Taylor*, 529 U.S. 420, 431 (2000)); *see also Air Line Pilots Ass’n*, 609 F.3d at 342 (quoting *FDIC v. Meyer*, 510 U.S. 471, 476 (1994)) (courts must construe statutory terms in accordance with their “ordinary or natural meaning[s]”). In addition, courts must “abide by ‘the cardinal rule that statutory language must be read in context [because] a phrase gathers meaning from the words around it.’” *DIRECTV Inc.*, 403 F.3d at 225 (quoting *Gen. Dynamics Land Sys., Inc. v. Cline*, 540 U.S. 581, 596 (2004)); *see also Lara-Aguilar v. Sessions*, 889 F.3d 134, 143 (4th Cir. 2018) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004)) (“A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.”).

It is “[o]nly when statutory text is ambiguous” that courts should “consider other indicia of congressional intent such as the legislative history.” *United States v. Chaudhri*, 134 F.4th 166, 177 (4th Cir.), *cert. denied*, 146 S. Ct. 208 (2025) (quoting *Snyder’s-Lance, Inc. v. Frito-Lay N. Am., Inc.*, 991 F.3d 512, 516 (4th Cir. 2021)).

As mentioned above, the Fourth Circuit was asked earlier in this case to determine whether the SCRA “contains ‘a clearly expressed congressional intention’ to override the FAA’s instruction to enforce arbitration agreements.” *Espin*, 126 F.4th at 1016 (citing *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018)). The *Espin* court noted, “[t]he Supreme Court has concluded that arbitration agreements are enforceable ‘even when the claims at issue are federal statutory claims, unless the FAA’s mandate has been ‘overridden by a contrary congressional command.’” *Id.* (quoting *CompuCredit Corp. v. Greenwood*, 565 U.S. 95, 98 (2012)). The court concluded that the applicable SCRA provision “does not prohibit the [aggrieved] person from resolving a SCRA

claim in another forum, such as the arbitral forum” (*id.* at 1017), remanded this case with instructions to compel all SCRA-related claims to arbitration, and excepted from the remand the Plaintiffs’ MLA claims, finding that the statute “does indeed manifest a congressional intent to override arbitration” (*id.* at 1019).

This court recognizes the strong presumption of arbitrability and the Supreme Court’s admonition that “courts have a duty to interpret Congress’s statutes as a harmonious whole rather than at war with one another.” *Id.* at 1017 (cleaned up). Mindful of this and the applicable legal standards, the court finds that the MLA explicitly overrides the enforcement of arbitration agreements for those protected by its arbitration provision.

Section 987(f)(4) provides in relevant part that “[n]otwithstanding section 2 of title 9 [the FAA] or any other Federal or State law, rule, or regulation, no agreement to arbitrate any dispute involving the extension of consumer credit shall be enforceable against any covered member . . . or any person who was a covered member . . . when the agreement was made.” 10 U.S.C. § 987(f)(4). First, the “notwithstanding . . .” clause makes clear that no other law or regulation matters to the application of this provision. *Cf. Steines v. Westgate Palace, L.L.C.*, 113 F.4th 1335, 1343 (11th Cir. 2024) (“The MLA entirely displaces the FAA.”). The next clause “no agreement to arbitrate any dispute involving the extension of consumer credit” means, of course, that the arbitration agreement must concern a dispute over conduct governed by the MLA.² The final

² The court is cognizant of at least one other court’s finding that “any dispute” removes any limitation of the arbitration provision to only MLA claims. *See Vickery v. Empower Fin., Inc.*, No. 25-CV-03675-JSC, 2025 WL 2841686, at *8 (N.D. Cal. Oct. 7, 2025); *see also Moss v. Cleo AI Inc.*, 799 F. Supp. 3d 1152, 1161 (W.D. Wash. 2025) (“Moss’s TILA claim is inextricably linked to the same set of facts as his MLA claim[; thus], it is also subject to th[e] MLA-created exception to the FAA’s mandate favoring arbitration”). The court agrees and recognizes that the MLA is not the only statute governing the “extension of consumer credit.”

clause provides that *no* such arbitration agreement “shall be enforceable against *any* covered member,” whether a current active duty service or reserve member, or one who held such status at the inception of the credit card agreement.³ In essence, the provision provides the benefit of choice—i.e., whether or not to arbitrate—to a select group of claimants who are subject to an otherwise enforceable arbitration agreement, but who can show they are “covered members” under the MLA.

In this case, no party disputes that the subject arbitration provision is contained in the credit card agreements between Plaintiffs and the Defendant, and that the Plaintiffs’ claims involve the extension of consumer credit. Thus, the only remaining question concerning Defendant’s request to compel arbitration of Plaintiffs’ MLA claims is whether any Plaintiff (or putative class member) is a “covered member” as defined by the MLA.

Under the MLA, a covered member “means a member of the armed forces who is (A) on active duty under a call or order that does not specify a period of 30 days or less; or (B) on active Guard or Reserve Duty.” 10 U.S.C. § 987(i)(1). Accordingly, the relevant provision applies to render unenforceable any arbitration agreement for a card holder who is either (1) a current active service, guard, or reserve member; or (2) an active service, guard, or reserve member at the inception of a credit card agreement after the effective date of the MLA.

Here, Plaintiffs allege that Bell “is currently a Sergeant First Class in the Army” (Am. Compl. ¶ 47), and they argue Bell and Espin are covered members entitled to choose under §

³ The court finds that the language, “or any person who was a covered member . . . when the agreement was made,” must, by operation of the MLA’s non-retroactive effective date and for the reasons stated herein, apply to agreements originating after October 3, 2017. *See Lara-Aguilar*, 889 F.3d at 143 (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004)) (“[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.”).

987(f)(4) whether to arbitrate their consumer credit disputes (DE 94 at 11). No party disputes that Bell is a current active duty service member; therefore, under § 987(f)(4), he has the choice whether to arbitrate his consumer credit dispute(s) and, here, he clearly declines. Accordingly, the subject arbitration agreement cannot be enforced against Bell. The court must conclude that an order granting Defendant's motion to compel Bell's claims to arbitration is contrary to law.

Regarding Espin, Plaintiffs concede he is no longer on active duty and they do not argue that Espin was on active duty at the inception of his agreement with Defendant. Thus, under the plain language of § 987(f)(4), Espin is not a covered member nor was he a covered member at the time the agreement was made. Plaintiffs argue that Espin was on active duty at the time the original Complaint was filed in 2022; the court notes that the first Amended Complaint also contains allegations reflecting that Espin was on active duty (*see* Am. Compl. ¶ 33, DE 26). However, the operative Second Amended Complaint, filed June 10, 2025, makes clear that “[i]n November 2022, Mr. Espin did in fact leave active duty” 2d Am. Compl. ¶ 40, DE 82. The Fourth Circuit instructs that “[o]rdinarily, an amended complaint supersedes those that came before it.” *Goodman v. Diggs*, 986 F.3d 493, 498 (4th Cir. 2021) (citing *Young v. City of Mount Ranier*, 238 F.3d 567, 572 (4th Cir. 2001), *abrogated on other grounds by Kingsley v. Hendrickson*, 576 U.S. 389 (2015)). In other words, “the mere assertions of an unverified pleading fall ‘out of the picture’ when replaced by those of another complaint.” *Id.* at 499. Thus, for purposes of his current claims, Espin is not a covered member under § 987(f)(4).

Plaintiffs make no objection nor proffer any argument concerning whether Plaintiffs Padoa and Taylor are “covered members” eligible for § 987(f)(4)’s benefit. The record presented does not indicate that either Plaintiff is a current active duty service member (*see* Am. Compl. ¶ 41 (“Padoa ... recently retired”); ¶ 62 (“Taylor left active duty”)) or was on active duty at the inception

of their credit agreements. Judge Jones found that Plaintiffs Padao, Taylor, and Espin are not barred from arbitration by § 987(f)(4) and the court finds no error in this conclusion, albeit for different reasons.

Defendant argues that all Plaintiffs are not covered under the MLA because the statute was not in effect at the time they entered their agreements with Defendant. Judge Jones agrees with Defendant, concluding that “because Plaintiffs’ accounts were opened prior to October 2017, the MLA and its arbitration bar do not apply regardless of any subsequent changes to Plaintiffs’ duty status.” DE 93 at 13.

The error here is in failing to recognize that the plain language of § 987(f)(4) contains terms inconsistent with this conclusion. As stated above, § 987(f)(4) provides an opportunity to challenge the enforceability of an arbitration agreement to a “covered member” *or* to “any person who was a covered member . . . when the agreement was made.” Relevant here, the statute further defines “covered member” as one on active military, guard, or reserve duty. *See* 10 U.S.C. § 987(i)(1). Under Defendant’s theories, which focus on when the agreement was made, no person who entered an agreement before October 3, 2017, would be a “covered member” under § 987(f)(4). However, the arbitration provision, unlike other provisions of § 987, specifies that “*no* agreement to arbitrate . . . shall be enforceable against *any* covered member,” notwithstanding the FAA “or any other Federal or State law, rule, or regulation.” *Id.* § 987(f)(4) (emphasis added). Under this clear language, it is evident that Congress intended that current active duty members enjoy the benefit of choosing whether to forego an arbitration agreement in a dispute involving the extension of consumer credit, notwithstanding the date of the inception of the agreement.⁴

⁴ The Order cites the Eleventh Circuit’s opinion in *Steines, supra*, for the proposition that § 987(f)(4) “can only apply where the MLA itself applied in the first instance at the time the account was opened.” DE 93 at 12. *Steines*, however, actually supports this court’s interpretation of the

To the extent that Defendant might argue this construction results in prejudice or unfairness to credit issuers (*see* DE 93 at 9 (citing 79 Fed. Reg. at 58,616)), the court notes that Congress specifically delineated those persons who are to benefit from § 987(f)(4) to include not only all covered (active duty) members, but also those who were on active duty at the inception of the agreement. The provision’s inclusive language aligns with the purpose of the MLA to “provide additional protections relating to [certain credit] transactions” to “Service members and their dependents.” 32 C.F.R. § 232.1(b); *see also Davidson v. United Auto Credit Corp.*, 65 F.4th 124, 130 n.8 (4th Cir. 2023) (quoting *Henderson v. Shinseki*, 562 U.S. 428, 441 (2011)) (“provisions for benefits to members of the Armed Services are to be construed in the beneficiaries’ favor”). The protection provided in § 987(f)(4) applies to a covered member’s choice of forum, not his or her claims, and by its clear terms, the provision governs *any* dispute involving an extension of consumer credit that is subject to an arbitration agreement.

MLA. In determining whether an active-duty borrower’s claims could be compelled to arbitration, the court found that “[t]wo separate clauses of the MLA establish *Congress’s clear intent to prohibit* lenders of consumer credit from *requiring servicemembers to arbitrate claims* therefrom.” 113 F.4th at 1343 (emphasis added). The court cited, as here, § 987(f)(4), as well as § 987(e)(3), which makes it unlawful for any creditor to extend consumer credit to a servicemember where “the creditor requires the borrower to submit to arbitration.” *Id.* at 1343-44. When analyzing § 987(f)(4), the Eleventh Circuit interpreted the statute as, “[i]f the MLA applies to a contract involving the extension of consumer credit, the district court cannot enforce any agreement in that contract to arbitrate any dispute.” *Id.* at 1344. The Order here cites this interpretation and emphasizes the term “if the MLA applies” in support of its finding that application depends on the date of the inception of the agreement (DE 93 at 12); however, the Order takes the term out of context. Just prior to its § 987(f)(4) interpretation, the *Steines* court asserts that “the Supreme Court has recognized, albeit in dicta, that the MLA overrode the FAA by making it ‘unlawful’ to require *a party subject to the MLA* to arbitrate.” 113 F.4th at 1344 (emphasis added). Also, just after the interpretation, the court concludes that “the MLA over[rides] *all* disputes . . .” and “[b]ecause the FAA has been unmistakably overridden . . . the underlying arbitration agreement at issue in this case [is] unenforceable.” *Id.* (emphasis added). This language, and the decision as a whole, demonstrates that the *Steines* court interpreted § 987(f)(4) to protect all “covered members” in their choice of forum, notwithstanding the date of the consumer credit agreement. *Steines*, while not binding, is certainly persuasive in its interpretation of the MLA and its arbitration provisions.

Although not necessary to the analysis given the court’s interpretation of the plain language of the statute,⁵ the court notes that the Department of Defense (“DoD”) regulation governing applicability of the MLA describes as an example of someone who is “covered” under the statute a person who “is ordered to serve on active duty,” even *before* such person enters into an “open-end line of credit,” at which time the person becomes a “covered borrower.” 32 C.F.R. § 232.2(a)(2)(i); *see also Wood v. Omni Fin. of Nevada, Inc.*, No. 1:22-cv-1148-LMB, 2023 WL 3766524, at *3 (E.D. Va. May 31, 2023) (describing the difference between “covered members” and “covered borrowers” under the MLA).⁶ This example appears to illustrate Congress’ intent that, for the MLA’s arbitration provision, card holders currently on active duty (“covered members”), as well as those on active duty when the credit agreement was made, notwithstanding the FAA or any other law, rule, or regulation, shall have the option to bring their disputes before an arbitrator or “any appropriate United States district court,” subject, of course, to the MLA’s statute of limitations. *See* 10 U.S.C. § 987(f)(5)(E). This interpretation “can most fairly be said to be imbedded in the statute, in the sense of being most harmonious with its scheme and the general purposes that Congress manifested.” *Davidson*, 65 F.4th at 135 (Wilkinson, J. dissenting)

⁵ The court has interpreted the plain language of the statute and, thus, it is unnecessary to consider the MLA’s legislative history and/or the DOD’s interpretation of the statute, if any. *See Van Alstyne v. Elec. Scriptorium, Ltd.*, 560 F.3d 199, 207 (4th Cir. 2009) (“[W]hen statutory language is plain and unambiguous,” the court’s examination of the statute ceases, and “there is no need for recourse to legislative history.”). The court also notes that this matter does not involve a challenge to, or reliance on, a regulation or any agency action and, thus, the Supreme Court’s instructions concerning statutory interpretation in *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), do not apply.

⁶ The DoD, in defining “covered borrowers” as covered members who “become[] obligated on a consumer credit transaction or establish[] an account for consumer credit,” states that a covered borrower is *not* someone who, though covered at the time the agreement was made, is no longer a covered member. 32 C.F.R. § 232.3(g)(4). In contrast, § 987(f)(4), by its clear terms (“any person who was a covered member . . . when the agreement was made”), applies to such a person. In this respect, the court finds 32 C.F.R. § 232.9(d), which confines the benefits of § 987(f)(4) to “covered borrowers,” inconsistent with § 232.3(g)(4) and the plain language of the statute.

(quoting *Comm'r v. Engle*, 464 U.S. 206, 217 (1984)).

In concluding that the MLA's arbitration provision does not apply to current active duty service members whose agreements arose prior to October 3, 2017, the Order fails to recognize the expanse of the coverage contained in the provision's clear terms. Again, the provision expressly removes from consideration the FAA and *any other* federal or state law, rule, or regulation. Applicable to this case, the provision further provides that *no* agreement to arbitrate *any* dispute concerning an extension of credit *shall be* enforceable against *any* covered member. Any plaintiff currently on active duty is a "covered member" under § 987(i)(1), and his or her arbitration contract with Defendant cannot be enforced against such plaintiff pursuant to § 987(f)(4).

As Plaintiffs Espin, Padoa, and Taylor are not "covered members" under the MLA, nor is there evidence or argument that they were covered members when their agreements with Defendant were made, the arbitration provision does not provide them the benefit of choosing to pursue their claims through litigation. These Plaintiffs' claims against Defendant shall be compelled to arbitration, as originally contracted.

In light of this order, the court need not address Plaintiffs' remaining objections to Judge Jones' Order. Any discussion concerning the meaning of "extension" of consumer credit, while perhaps relevant to the analysis of alleged violations of the MLA's proscriptive provisions, is not pertinent to whether a covered service member can be compelled to arbitration under the MLA's clear language in § 987(f)(4).

Finally, the court finds this order is not wholly inconsistent with the Fourth Circuit's ruling in this case. That is, citing § 987(f)(4), the *Espin* court recognizes that the MLA "does indeed manifest a congressional intent to override arbitration." 126 F.4th at 1019; *see also Steines*, 113

F.4th at 1343 (“The statutory text couldn’t be clearer that where the MLA applies, the FAA does not.”). While the *Espin* court acknowledges the parties’ disagreement “about the meaning of ‘extending consumer credit’” in describing the dispute, the court also observes that the “district court never addressed the MLA question” and remanded the case “to enable the [district] court to determine whether the MLA applies to this case” *Id.* at 1020. Unlike here, the *Espin* court made no finding as to whether Plaintiffs are covered members under the MLA and, thus, did not find that the MLA’s arbitration provision prohibits enforcement of arbitration agreements against covered service members for consumer credit disputes. *See id.*

That said, this court recognizes that the Fourth Circuit has remanded the case “with instructions . . . to compel arbitration on all claims except those brought under the MLA.” *Id.* As such, this court acknowledges that any order issued in this case ruling, without more, that Bell’s non-MLA claims should *not* be compelled to arbitration violates the “mandate rule,” which “requires a lower court to faithfully apply the mandate of a higher court, which is controlling as to all matters within its scope.” *JTH Tax, Inc. v. Aime*, 984 F.3d 284, 291 (4th Cir. 2021) (cleaned up). Unless an exception to the mandate rule applies, the court is required to follow the Fourth Circuit’s instruction and order that Bell’s non-MLA claims are compelled to arbitration.⁷

The Fourth Circuit instructs that the mandate of an appellate court does “not contemplate resurrecting an issue on remand,” *United States v. Bell*, 5 F.3d 64, 67 (4th Cir. 1993), and, in fact,

⁷ Defendant’s contention that the Fourth Circuit’s “denial of Plaintiffs’ petition for rehearing underscores [its] mandate” is not persuasive. *See* Reply, DE 90 at 10. While Plaintiffs argued in their Petition for Rehearing before the Fourth Circuit that its instruction to compel arbitration of Plaintiffs’ non-MLA “improperly—and potentially inadvertently—narrow the scope of the MLA’s protections” (DE 85-3), the appellate court’s simple denial of such petition does not itself demonstrate the court’s rejection of Plaintiffs’ position. It is just as plausible that the Fourth Circuit intended for the district court, at the first instance, to interpret the MLA and determine its applicability in this case.

the rule “forecloses relitigation of issues expressly or impliedly decided by the appellate court,” *S. Atl. Ltd. P'ship of Tennessee, LP v. Riese*, 356 F.3d 576, 584 (4th Cir. 2004). However, “the trial court may still possess some limited discretion to reopen the issue in very special situations.” *Bell*, 5 F.3d at 67 (citation omitted). These circumstances are: (1) a “show[ing] that controlling legal authority has changed dramatically; [(2) that] significant new evidence, not earlier obtainable in the exercise of due diligence[, has come to light]; or . . . [(3)] that a blatant error in the prior decision will, if uncorrected, result in a serious injustice.” *Id.* In this case, no party can argue persuasively that the first or second set of circumstances exists.

Regarding the third set, while this court deems the instruction to compel to arbitration Bell’s non-MLA claims—given that he is indisputably a covered member under § 987(f)(4)—an “error,” such error is not “blatant,” as defined by the Fourth Circuit. *See United States v. Benton*, No. 23-4009, 2025 WL 2319658, at *3 (4th Cir. Aug. 12, 2025), *cert. denied*, 146 S. Ct. 1854, 224 L. Ed. 2d 365 (2026) (“Without controlling precedent . . . we struggle to view any alleged error as ‘blatant.’”). Furthermore, the appellate court’s assessment is correct, so far as it goes, but because the court did not reach the MLA analysis, the mandate failed to account for the broad protection provision enacted by Congress. The MLA is particularly unusual in that Congress created a forum protection clause – highly uncommon in federal law – that provides blanket coverage through its “notwithstanding” clause to a select group of people. In this case, the Fourth Circuit left to the district court the interpretation of the MLA and its arbitration provision and, having stopped short of making any findings concerning the MLA’s applicability, ordered to arbitration, consistent with its analysis of the parties’ arguments concerning the SCRA and related statutes, all non-MLA claims. Therefore, pursuant to *Espin*, 126 F.4th at 1019 and the mandate rule, this court orders that Bell’s non-MLA claims must be compelled to arbitration.

In sum, the court finds, for reasons different than those expressed by Judge Jones, nothing contrary to law in the Order to grant Defendant's motion to compel to arbitration all claims alleged by Espin, Padoa, and Taylor, and all non-MLA claims alleged by Bell against Defendant, but respectfully finds the Order contrary to law as to the MLA claims alleged by Bell.

V. Conclusion

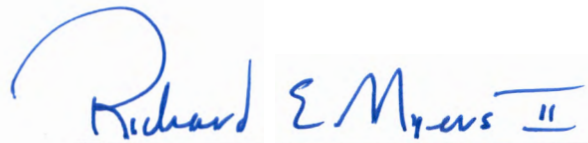
"[W]hen, as here, Congress perceives stark inequalities in the bargaining parties, it is constitutionally entitled to supply a corrective. Congress did so in the Military Lending Act" *Davidson*, 65 F.4th at 141 (4th Cir. 2023) (Wilkinson, J. dissenting). For the reasons stated herein, the court finds that, with respect to Plaintiffs Espin, Padoa, and Taylor, Judge Jones' Order to compel arbitration and stay the action is not contrary to law. However, the conclusion that "because Plaintiffs' accounts were opened prior to October 2017, the MLA and its arbitration bar do not apply regardless of any subsequent changes to Plaintiffs' duty status" (DE 93 at 13) is contrary to law. The plain language of that statute provides covered members, like Bell, the choice to decline the opportunity to bring his claims to arbitration and, in this case, Bell clearly declines. Bell's MLA claims will proceed to discovery in accordance with a forthcoming Scheduling Order.⁸

Accordingly, the court AFFIRMS Judge Jones' Order concluding that all claims by Plaintiffs Espin, Padoa, and Taylor, and non-MLA claims by Bell are subject to arbitration pursuant to their agreements with Defendant, and REVERSES the order concluding that 10 U.S.C. § 987(f)(4) does not apply to render unenforceable the agreement between Plaintiff Bell and Defendant to arbitrate Bell's MLA claims.

⁸ The court recognizes that, in addition to their own claims, the named Plaintiffs seek to represent those "similarly situated" in this putative class action. The court makes, and has made, no findings as to the "class" aspect of this action. Issues related to certification and representativeness are not before the court at this time.

The proceedings of this case concerning all claims by Plaintiffs Espin, Padoa, and Taylor, and non-MLA claims by Bell are STAYED until further order of the court. The remaining MLA claims by Bell are referred to the magistrate judge for a scheduling order and/or other appropriate action at this stage of the litigation.

SO ORDERED this 4th day of August, 2026.



RICHARD E. MYERS II
CHIEF UNITED STATES DISTRICT JUDGE