

STATE OF NEW MEXICO
COUNTY OF MCKINLEY
ELEVENTH JUDICIAL DISTRICT COURT

dm

D-1113-CV-2014-00128

NORA ANDERSON,
on behalf of herself and
all others similarly situated,

Plaintiff,

v.

THE BIG "E," INCORPORATED and
NATIVE AMERICAN LOAN COMPANY, INC.
d/b/a ELLIS TANNER TRADING COMPANY,

Defendants.

CLASS ACTION COMPLAINT

1. Defendants lend money, primarily to Navajo customers, as short-term, high-cost "holiday loans" and "tax refund loans." Defendants engaged in unfair and deceptive practices in offering and making these consumer loans, in violation of the New Mexico Unfair Practices Act ("UPA"), NMSA 1978, § 57-12-1 *et seq.* and New Mexico Small Loan Act, NMSA §58-15-1 *et seq.* Defendants misrepresented the terms of financing by failing to disclose accurately the finance charges and other loan terms. Defendants also breached the loan agreements.
2. The events which are the subject of this Complaint took place in this District.

Parties

3. Plaintiff Nora Anderson resides in Navajo, New Mexico.
4. Most of the members of the class that Ms. Anderson represents, like Ms. Anderson

herself, are Navajo, living on or about the Navajo reservation in New Mexico and Arizona. Many class members live in this judicial district. Each of them entered into one or more consumer loan transactions with Defendants in Gallup.

5. The plaintiff and each of the class members is a "consumer" as defined by the Truth in Lending Act ("TILA"), 15 U.S.C. 1602(h), and Regulation Z, 12 C.F.R. § 226.2(a)(11).
6. Defendants The Big "E", Incorporated and its subsidiary, Native American Loan Company, Inc. (hereafter referred to jointly as "Ellis Tanner") are New Mexico corporations located in Gallup, New Mexico. Defendants conduct business under the name Ellis Tanner Trading Company.
7. Ellis Tanner Trading Company is a modern-day old fashion trading post. People can bring in lambs, piñons, jewelry, wool, and rugs to sell. In the general store, they can buy groceries, dry goods, and hardware. There is a pawn shop where people can pawn for cash, and a jewelry store where they can buy jewelry. During income tax season, they can file their taxes and get credit on their anticipated refund. Defendant is a fourth-generation trader in Gallup since 1967.
8. Each of the Defendants is a "creditor," as defined in the TILA, 15 U.S.C. §1602(f), and Regulation Z, 12 C.F.R § 226.2(a)(17).

Significance of Truth in Lending Act

9. Plaintiff refers to the Truth in Lending Act ("TILA") throughout this Complaint. The TILA sets ironclad requirements for disclosure of the terms for extending consumer credit. These terms applied to all of the loans between the members of the class and the defendants. The New Mexico Unfair Practices Act ("UPA"), NMSA 1978, § 57-12-1 *et seq.*, also applies to each of these transactions. The Defendants' failures to comply with

the TILA entail misrepresentations and omission of material information, within the meaning of the UPA. Plaintiff and members of the class have chosen to sue under the UPA and for breach of contract.

Ellis Tanner Operates a Loan Business

10. Ellis Tanner conducts a loan business and is licensed by the State of New Mexico under the New Mexico Small Loan Act.
11. Ellis Tanner extends short-term loans based upon the expectation that the borrowers soon will receive substantial tax refunds, primarily from the federal government.
12. These tax refunds are fueled by the federal Earned Income Tax Credit program, which assists the working poor through an income tax-related program.
13. In order to obtain these refunds, consumers must file a federal tax return.
14. Many consumers are not capable of preparing their own tax returns, and they seek help from professional tax preparers like Ellis Tanner Tax Service (“ETTS”).
15. Ellis Tanner Tax Service is separately owned and incorporated as MCN, Inc. However, it operates under the Ellis Tanner name, and it uses the same building and parking lot that Ellis Tanner occupies, at 1980 Highway 602, Gallup, NM 87305. In 1998 MCN, Inc. bought the ETTS tax preparation business from Ellis Tanner for \$600,000.
16. ETTS maintains a close and continuing relationship with Ellis Tanner. Ellis Tanner receives or retains fees, rents, benefits and other consideration for providing customer referrals to the ETTS tax preparation service. ETTS pays Ellis Tanner \$100,000 annual rent for class D office space with a concrete floor, where it uses the 4,000 square feet for only three to four months. (ETTS uses only part of that space for the rest of the year).
17. Professional tax preparers like ETTS charge their customers fees for their services.

18. ETTS charges a fee but defers receipt of that fee until consumers' tax refunds arrive.
19. ETTS files the tax returns electronically, and the IRS and state refunds are transferred electronically to a bank account set up and controlled by Ellis Tanner.
20. After Ellis Tanner receives the tax refunds, it disburses part of the "pre-filing" fee and the tax return "filing fee" to ETTS, and it keeps a portion of the fees for itself.
21. Ellis Tanner keeps \$60,000 to \$90,000 annually in fees from ETTS.

Ellis Tanner Issues "Holiday Loans" with Multiple Fees

22. Ellis Tanner offers what it calls "holiday loans" to customers, in November and December, before tax season. It issues these "holiday loans" using the same loan agreement form as its regular (post January 1) tax refund loan agreements. See Exhibits 1 and 2, "holiday loan" agreements entered into by Ms. Anderson.
23. Ellis Tanner extends these loans before anyone knows the entire year's income and the amounts of the tax refunds. Therefore, Ellis Tanner needs to engage in underwriting to determine if the potential borrower will be able to repay the loans. Ellis Tanner must estimate the borrower's total wages for the year and the tax refunds the borrowers will qualify to receive.
24. Ellis Tanner sends its customers around the side of the building to ETTS, which carries out the actual estimating work by reviewing the pay stubs and records of borrowers. ETTS furnishes this information to Ellis Tanner, which decides whether to issue "holiday loans" and the amount of such loans.
25. For this underwriting work, which is necessary to qualify for the "holiday loans," the borrower is assessed a "pre-filing fee," which was a charge Ellis Tanner imposed on borrowers as a condition of extending credit to the Plaintiff. Ellis Tanner later deducts

this fee from the borrower's tax refunds. Ellis Tanner does not disclose this charge as part of the Finance Charge, as required by the TILA, nor does it disclose the fee in the loan documents furnished to the borrower. The failure to disclose this material information is an unfair and deceptive trade practice.

26. At this early stage, the borrower cannot file a tax return, so there is no secure source of funds as collateral for the "holiday loans."
27. Instead, Ellis Tanner requires borrowers to turn over birth certificates, social security cards and valuable tribal documents as collateral to secure payment of these "holiday loans." Ellis Tanner only returns these documents when the borrowers came back to have ETTS prepare their tax returns, at which point Ellis Tanner finalizes its security interest in the borrowers' federal and state tax refunds.
28. The "holiday loan" agreements issued by Ellis Tanner from November, 2009 through December, 2012 misrepresent this state of affairs and inaccurately state that the "holiday loans" are "unsecured."
29. In connection with the "holiday loans," Ellis Tanner also requires each borrower to sign a set of agreements. It does not give the borrowers a copy of these agreements, which is an unfair, deceptive and misleading practice, because these agreements contain material information. In the agreements, the borrowers:
 - a. Promise Ellis Tanner to return in January to file their tax returns;
 - b. Authorize Ellis Tanner to establish a bank account in their name at Bank of Albuquerque, for the purpose of receiving payments of federal and state tax refunds;
 - c. Authorize Bank of Albuquerque to transfer by electronic draft all funds received

- in this account to the account of Big "E," Inc. d/b/a Ellis Tanner Super Card;
- d. Direct the Bank of Albuquerque to deliver all statements for the account directly to Big E, Inc.;
 - e. Grant a security interest in their tax refunds, the proceeds and the account;
 - f. Agree to allow Ellis Tanner Trading Co. to receive and to open the borrowers' mail pertaining to income tax matters;
 - g. Agree to repay the loans from the proceeds of their income tax refund checks;
 - h. Agree to repay the balance of the loan(s) with other funds, if the tax refunds are not sufficient to pay the loan(s);
 - i. Agree to endorse refund checks promptly, if needed;
 - j. Authorize a non-refundable \$15.00 "processing fee" to be charged to their account in connection with obtaining a credit report;
 - k. Authorize Big E, Inc. to obtain a credit report, verify employment and check personal references; and
 - l. Agree to pay a late charge of 1½% per month on delinquent accounts.
30. Ellis Tanner also has the borrowers sign a power of attorney, in which the borrowers instruct the IRS to send their tax refunds to Ellis Tanner, as well to mail Ellis Tanner all communications pertaining to their income tax return. Ellis Tanner sends the signed power of attorney to the IRS but does not give a copy to the borrower.
31. Taking possession of valuable documents and requiring the borrower to sign the agreement to return to Ellis Tanner to file her income tax return are anti-competitive and unfair practices. Through these practices Ellis Tanner:
- a. Compelled plaintiff to allow Ellis Tanner Tax Service to prepare her tax returns,

instead of availing herself of free tax preparation through the VITA program offered and organized through the IRS.

- b. Generated the opportunity for additional tax refund loans after January 1.
32. On the first “holiday loan” in 2009 and 2010, Ellis Tanner charged class members a “credit report fee.”
33. Starting in November, 2011 Ellis Tanner:
- a. increased the “credit report fee” and renamed it a “processing fee;”
 - b. implemented a new fee, a “loan document fee,” for each loan transaction.

Ellis Tanner Issues Tax Refund Loans with Multiple Fees

34. Ellis Tanner’s primary loan product is the Tax Refund Loan, which it extends to borrowers once tax season begins, after January 1 of each year. Ellis Tanner has been extending tax refund loans for many years. The tax refund loan agreement uses the same form as the “holiday loans.” See Exhibit 3.
35. Plaintiff and members of the class entered into “tax refund loan” agreements.
36. Typically, a borrower or borrowers (husband and wife) would take out multiple tax refund loans, as did Ms. Anderson.
37. These loan agreements disclosed an inaccurate Finance Charge, in that it consists solely of the interest charge on that loan.
38. Ellis Tanner charged the “credit report fee” (later, the “processing fee”) for the first tax refund loan agreement which the borrower entered during the January - April tax refund loan season.
39. Ellis Tanner also charged the “loan document fee” for each tax refund loan extended, beginning in November, 2011.

40. ETTS also charged a fee much higher than the “pre-filing fee” for preparing the actual tax returns, typically in the \$200-\$400 range.
41. ETTS defers payment of its fee. When the customer’s tax refunds arrive, Ellis Tanner disburses the money to ETTS to cover its fee. Ellis Tanner received money as a Finance Charge indirectly from ETTS, in the form of inflated “rent,” a \$10 per customer fee for collecting ETTS’s money, and other consideration.
42. All these “tax refund loans” to Plaintiff and members of the class followed this pattern.

**Ellis Tanner Changes Its Loan Terms Beginning with Its 2011 “Holiday Loans,”
and Plaintiff and Class Members Entered into these Loans**

43. Beginning with its “holiday loans” in November, 2011, Ellis Tanner changed its standard loan terms in several ways. Each of these changes increased the money which Ellis Tanner took from its borrowers.
 - a. It increased the interest it charged on the loans, from 20% of the loan principal to 26% of the loan principal.
 - b. It raised its “pre-filing fee” to \$55 (and later to \$60).
 - c. It added a \$10 “loan document fee” for every loan.
 - d. It changed the name of its “credit report fee” to call it a “processing fee,” and it raised the amount it charged from \$12.50 to \$15.00.
 - e. It lengthened the term of the loans from 30 days to 60 days.
44. On November 12, 2011 and on December 17, 2011, Plaintiff Nora Anderson borrowed \$500 each time in a set of “holiday loans” at a 156% Annual Percentage Rate.
45. Plaintiff signed the Bank Account Authorization and other agreements allowing Ellis Tanner and Bank of Albuquerque to establish the bank account to receive the tax refunds,

as described above.

46. For each loan, Plaintiff signed a “Tax Refund Loan Agreement and Disclosure Statement.” See Exhibits 1 and 2.
47. Each of those loan agreements disclosed a Finance Charge of \$130, which consisted solely of interest on the loans. The loan agreements of members of the class also disclosed a Finance Charge which consisted solely of interest on the loans.
48. On each loan agreement, Ellis Tanner charged a \$10.00 “Loan Document Fee.” Ellis Tanner did not disclose that charge as part of the Finance Charge or Annual Percentage Rate, nor as part of the Amount Financed.
49. On the first “holiday loan” in 2011, Ellis Tanner also charged a \$15.00 “Processing Fee.” Ellis Tanner did not disclose that charge as part of the Finance Charge or Annual Percentage Rate, nor as part of the Amount Financed.
50. Ellis Tanner also assessed to Plaintiff and members of the class a \$55 “pre-filing fee.”
51. The “processing fee” (and the “credit report fee” it succeeded), the “loan document fee” and the “pre-filing fee” all were charges that Ellis Tanner imposed as a condition of extending credit to the Plaintiff and members of the class.
52. Defendants had never disclosed these fees as part of the Finance Charge and Annual Percentage Rate, and it continued to fail to disclose those fees as a Finance Charge.
53. The “holiday loan” agreements continued to state, “Your loan is unsecured.”
54. Members of the class who entered into “holiday loans” did so in this same fashion, using these same form loan agreements and encountering these identical practices with respect to the loan process.

Plaintiff and Members of the Class

Then Borrowed Money in Several 2012 Tax Refund Loan Transactions

55. In January, 2012 the Plaintiff went back to have Ellis Tanner prepare her tax returns.
56. There were no information brochures readily available to Plaintiff, and none by the main door entrance, explaining common loan terms to help the borrowers understand the loan process and loan obligations.
57. ETTS completed the Plaintiff's federal and state tax returns and then filed the returns electronically with the IRS.
58. ETTS charged the Plaintiff for these services but deferred payment.
59. Plaintiff qualified for tax refunds from the federal and state governments.
60. Ellis Tanner took a security interest in the tax refunds and the bank account into which the refunds were deposited. When the refunds arrived, they were deposited directly into Plaintiff's account with Big E, Inc., dba Native American Loan Company Inc.
61. In order to obtain cash, through a series of tax refund anticipation loans Plaintiff had borrowed money at an interest rate disclosed as a 90% Annual Percentage Rate. See Exhibits 3 (standard loan form for tax refund loans in January and February, 2012).
62. The loans to Ms. Anderson consisted of five loans entered into between January 27 and February 12, 2012, in amounts ranging from \$150 to \$1,000. See Exhibits 3 - 7.
63. Likewise, Ellis Tanner entered into loan agreements with the class, where Defendants typically issued multiple loans to each class member in January and February, 2012.
64. Each of these January and February loans is called a "Tax Refund Loan Agreement."
65. The Defendants maintained a security interest in those tax refunds, both because the tax

refunds were directed into an account controlled by Ellis Tanner, and because one of the other documents that Plaintiffs signed stated that the Plaintiffs were granting a security interest in their tax refunds and the account where the refunds were deposited.

66. However, each Tax Refund Loan Agreement and Disclosure Statement said that "Your loan is unsecured," which misrepresented the truth.

67. The Truth in Lending Act ("TILA") requires that each of these loan contracts contain certain disclosures of the terms of financing.

68. On each loan Ellis Tanner charged a \$10.00 "Loan Document Fee." That charge should have been disclosed as part of the Finance Charge or Annual Percentage Rate, or as part of the Amount Financed, but it was not. Therefore, Ellis Tanner misrepresented the Finance Charge and APR on each loan document.

69. Ellis Tanner also charged a \$15.00 "Processing Fee" on the first loan to each of its borrowers in January or February. Ellis Tanner failed to disclose that charge properly, too, either as part of the Finance Charge and Annual Percentage Rate, or as part of the Amount Financed. This failure constituted another misrepresentation.

70. Defendants' disclosures of the Finance Charge, APR and Amount Financed were deceptive and misleading. The "Finance Charge" is "the sum of all charges, payable directly or indirectly by the person to whom credit is extended, and imposed directly or indirectly as an incident to the extension of credit." 15 U.S.C. §1605(a). Regulation Z states that the Finance Charge "includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit." 12 C.F.R. §226.4(a).

71. Defendants disclosed the Finance Charge and the Annual Percentage Rate inaccurately on

each loan agreement, by failing to include the “Loan Document Fee” and the “processing fee” as part of the Finance Charge and the Annual Percentage Rate, in violation of 15 U.S.C. §1638(a) and Regulation Z, 12 C.F.R. §226.18(e).

72. In the alternative, Defendants disclosed the Amount Financed inaccurately on each loan agreement, by failing to include the “loan document fee” and the “processing fee” as part of that category.

73. Each of these loans was a consumer credit transaction within the meaning of TILA, 15 U.S.C. § 1602 and Regulation Z, 12 C.F.R. § 226.2.

74. Plaintiff and members of the class entered into these tax refund loan agreements in this same fashion, involving these same form loan agreements and identical practices with respect to the loan process.

The Interest Charged on the 60 Day Loans is Excessive and Predatory

75. Beginning with the “holiday loans” in November, 2011, and continuing through the tax loan season from January into April, 2012 Ellis Tanner issued each of its loans for a term of 60 days. Prior to that time, it had issued 30 day loans.

76. For example, when Ms. Anderson entered into her five January/February 2012 tax refund loan agreements, each loan had a term of 60 days and was due between March 27 and April 12, 2012.

77. The 60 day term, and the Finance Charge and APR resulting from that figure, were estimates, because there was no certainty as to the date when the refunds would arrive and the borrowers would repay the loans.

78. If any information necessary for an accurate disclosure is unknown, the creditor *must* make the disclosure based on the best information “reasonably available” and *must* state

that the disclosure is an estimate. TILA Reg. Z § 1026.17(c) (2).

79. Every year the Internal Revenue Service issues an official e-file Refund Cycle Chart to tax preparers and others, including ETTS and Ellis Tanner. The chart contains two columns, (1) one of which lists each week in which the IRS accepts the e-filed tax return, and (2) the other which states the projected date a direct deposit will be sent. Typically the IRS sends the direct deposit 8 to 15 days after the IRS accepts the efiled tax return.
80. For example, based on the January 27 date that the IRS would have accepted Ms. Anderson's tax return, that chart projects that the direct deposit would be sent February 8. However, when Ellis Tanner prepared its loan agreements it disregarded this information. See Exhibit 8. The 60 day length of the loan certainly was not a "best estimate."
81. Furthermore, from its extensive experience, Ellis Tanner knew that more than 90% of federal tax refunds were issued in less than 21 days from filing with the IRS.
82. It was Ellis Tanner's customary practice to pay itself when it the refunds arrived. However, Ellis Tanner issued 60 day loans every time, rather than using the date appearing on the IRS Chart, and it did not disclose any aspect of the loan as an estimate.
83. Ellis Tanner knew that it would be collecting 60 days of interest on each of the loan agreements, and it also knew that it was extremely likely the refunds would be in its hands to pay the loans fully in less than 21 days.
84. Thus, Ellis Tanner deliberately and knowingly wrote deceptive contracts that resulted in interest charges that typically tripled the amount of interest it was entitled to earn.
85. The Finance Charge and APR disclosures were a sham and a misrepresentation, because Ellis Tanner knew that the plaintiff and members of the class would not have use of the money for the full 60 days.

86. To compound the abuse, Ellis Tanner wrote the contract to say, “If you pay off early you will not be entitled to a refund of part of the finance charge.”
87. Ellis Tanner’s loan agreements violate the express provisions of the New Mexico Small Loan Act, NMSA §58-15-14.1, which require that “the simple interest method shall be used” and that “interest charges shall not be paid, deducted or received in advance.”
88. Thus, the legislature has forbidden charging and collecting precomputed interest. By doing so, Ellis Tanner asserted a right that it did not have, in violation of the Unfair Practices Act.
89. The misstated 60 day term for these loans is a predatory lending practice, in addition to being deceptive, misleading and violating the Unfair Practices Act.
90. All of the class members entered into loans in this same fashion, involving these same form loan agreements and identical practices with respect to the loan process.

Class Action Allegations

91. Plaintiff Nora Anderson is a representative of a class of persons, consisting of all persons who borrowed money from Defendants and who signed the form document called “Tax Refund Loan Agreement and Disclosure Statement,” beginning four years prior to the filing of this Complaint, through April 15, 2012.
92. This class consists of three subclasses:
 - a. All persons who took out “holiday loans.” This subclass consists of persons who paid a “pre-filing fee;”
 - b. All persons who were assessed a \$10 “loan document fee” on a loan transaction. This subclass consists of persons who entered into one or more loans between November 1, 2011 and April 15, 2012; and

c. All persons who took out a tax refund loan between January 1 and April 15, 2012.

This subclass consists of persons whose loan was for a term of 60 days.

93. Ms. Anderson is a representative of each of these subclasses.

94. Members of the class may be members of more than one subclass.

95. The members of the class and each subclass are so numerous that joinder is impractical. Plaintiff believes the number of members of the class exceeds 1,000 persons, as do the number of members of each subclass.

96. The issues involve questions of law or fact common to the class, which facts and issues have been recited in detail throughout this Complaint, including:

- a. whether certain loan agreements may, tend to or do deceive or mislead borrowers by failing to include the \$10 "loan document fee" in the Finance Charge and APR;
- b. whether the 2012 tax refund loan agreements may, tend to or do deceive or mislead borrowers, by stating a 60 day loan term;
- c. whether loan agreements may, tend to or do deceive or mislead borrowers by failing to disclose the "credit report fee," "processing fee" and/or "pre-filing fee," and by failing to disclose those fees as part of the Finance Charge, affecting the Annual Percentage Rate;
- d. whether loan agreements may, tend to or do deceive or mislead borrowers by failing to disclose a security interest, including the nature of the security; and
- e. whether defendants understated the interest actually being charged class members.

97. Ms. Anderson's claims are typical of the claims of the class, arising out of the identical documents and uniform practices of defendants.

98. Ms. Anderson will fairly and adequately protect the interests of the class. She has

retained counsel experienced in bringing class actions of this type.

99. The questions of law or fact common to class members predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating these issues, within the meaning and standards set by NMRA 1-023B(3).

First Claim for Relief: Unfair Trade Practices

100. The loan agreements with Plaintiff and members of the class made deceptive or misleading statements about the Finance Charge, Annual Percentage Rate, Amount Financed, Total of Payments, security interests and the fees assessed in connection with these loans.
101. Defendants breached the substantive provisions in New Mexico Small Loan Act, and this conduct also constitutes unfair and unconscionable trade practices, including:
- a. Deducting and receiving interest charges in advance, thus failing to charge simple interest on the loans, in violation of NMSA 1978, § 58-15-14.1 by asserting that the transaction gave Defendants a right that they do not have.
 - b. Due to the artificially long and misstated 60 day loan term for certain loans, and by deducting and receiving interest charges in advance, Defendants failed to charge simple interest on the loans, in violation of NMSA 1978, § 58-15-14.1. This practice asserts that the transaction gave Defendants a right that they do not have.
 - c. Failing to have the required informational brochure readily available to all customers, which resulted in the omission of material information about the loan and the loan process, in violation of NMSA 1978, § 57-12-2D(14).

- d. Failing to deliver to the borrowers a written statement containing the information required by NMSA 1978, § 58-15-14.1 as to the method of computation of interest, which resulted in the omission of material information about the loan and the loan process, in violation of NMSA 1978, § 57-12-2D(14).
 - e. Requiring the borrowers to sign an agreement to allow 1-½% monthly interest in the case of a delinquency, which exceeds the amount permitted under law, NMSA 1978, § 58-15-20D and thus asserting the transaction gave them a right that they do not have.
102. Through these violations of the Small Loan Act Defendants have made deceptive and misleading statements or omissions which have asserted a right, remedy or obligation that did not exist, in violation of the Unfair Practices Act, NMSA 1978, § 57-12-2D, including 2D(14) and 2D(15).
103. For each of the loans between the parties in the four years preceding the filing of the Complaint in this case, Defendants' conduct was an unfair or unconscionable trade practice, or both, violating the New Mexico Unfair Practices Act ("UPA"), NMSA 1978, §57-12-1, *et seq.*
104. Plaintiff and the class seek actual damages, including the recovery of:
- a. All fees paid that Defendants failed to disclose as part of the Finance Charge and the APR, such as the "loan document fee," the "credit report fee" and the "processing fee;"
 - b. Pre-computed, unearned interest beyond the date Ellis Tanner received the federal tax refund;
 - c. The "pre-filing fee" used in the underwriting process to determine the amount of

“holiday loans” Ellis Tanner would issue.

105. Plaintiff and members of the class are entitled to recover actual damages for the violations in each loan contract.
106. Defendants willfully engaged in these unlawful trade practices, so Plaintiff and members of the class are entitled to recover actual damages trebled, plus costs and reasonable attorney fees.

Second Claim for Relief: Breach of Contract

107. Beginning in January, 2010 the loan agreements explicitly state that the borrower agrees to repay to the lender the amount financed plus the finance charge.
108. Beginning in November, 2011 the loan agreements explicitly state that the borrower agrees to repay to the lender the amount financed, plus the finance charge and a loan document fee of \$10.
109. Defendants breached these contracts by requiring payment of additional amounts, namely the “credit report fee,” the “processing fee,” and the “pre-filing fee.”
110. Plaintiff and the members of the class have sustained actual damages in the amount of each of these fees.

WHEREFORE, Plaintiff prays that the Court:

- A. Certify the case to proceed as a class action;
- B. Award actual damages, trebled, for violations of the Unfair Practices Act;
- C. Award actual damages for breach of contract;
- D. Award reasonable attorney fees and costs;
- E. Award such other relief as it deems just and proper.

Respectfully submitted,

/s/ Richard N. Feferman

Richard N. Feferman

Feferman & Warren, attorneys for Plaintiff

300 Central Ave., SW, Suite 2000 West

Albuquerque, NM 87102

(505) 243-7773

rfeferman@msn.com

NATIONAL CONSUMER LAW CENTER, INC., attorneys for plaintiff

Charles M. Delbaum, Esq. (to be admitted pro hac vice)

7 Winthrop Square, 4th floor

Boston, MA 02110

617-542-8010

cdelbaum@nclc.org



NATIVE AMERICAN LOAN COMPANY, INC.

1980 STATE HIGHWAY 602
P.O. BOX 636
GALLUP, NEW MEXICO 87305

NAMES(S) OF BORROWERS	SOC. SEC. NO.
NORA ANDERSON	XXX-XX-

DATE OF LOAN	LOAN NUMBER
11/12/2011	10541

ADDRESS OF BORROWER(S)	CITY	ST.	ZIP CODE	PHONE
PO BOX 656	NAVAJO	NM	87328	5057132102

TAX REFUND LOAN AGREEMENT AND DISCLOSURE STATEMENT

LOANS ARE ORIGINATED PURSUANT TO THE NEW MEXICO SMALL LOAN ACT OF 1955.

NATIVE AMERICAN LOAN COMPANY, INC., 1980 State Hwy 602, P.O. Box 636, Gallup, New Mexico 87305 (hereinafter "LENDER") hereby makes a loan to BORROWER(S) according to the following terms and conditions:

The purpose of this loan is for personal use.

You agree to repay to LENDER the AMOUNT FINANCED under this Loan Agreement and the FINANCE CHARGE under this Loan Agreement and a Loan Document Fee of \$10.00.

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your loan as a yearly rate 156.0%	The dollar amount the credit will cost you \$130.00	The amount of the loan provided to you or on your behalf. \$500.00	The amount you will have paid after you have made all payments as scheduled. \$640.00

YOUR PAYMENT SCHEDULE:		
Number of Payments	Amount of Payments	When Payment is Due
1	\$640.00	01/11/2012

PREPAYMENT: If you pay off early you will not have to pay a penalty. If you pay off early you will not be entitled to a refund of part of the finance charge.

Your loan is unsecured.

Your loan does not require that you carry credit disability or credit life insurance.

You agree to pay LENDER'S reasonable attorney fees and cost of collection if you do not repay this loan when it becomes due and payable. You acknowledge receipt of a filled-in copy of this Tax Refund Loan Agreement and Disclosure Statement.

Signature of Borrower X Nora Anderson Date 11.12.11 Soc. Sec. No. _____

Signature of Borrower X Date _____ Soc. Sec. No. _____

NATIVE AMERICAN LOAN COMPANY, INC.

By [Signature]





NATIVE AMERICAN LOAN COMPANY, INC.

1980 STATE HIGHWAY 602
P.O. BOX 636
GALLUP, NEW MEXICO 87305

NAMES(S) OF BORROWERS	SSC. SEC. NO.
NORA ANDERSON	XXX-XX-

DATE OF LOAN	LOAN NUMBER
12/17/2011	12956

ADDRESS OF BORROWER(S)	CITY	ST.	ZIP CODE	PHONE
PO BOX 656	NAVAJO	NM	87328	5057132102

TAX REFUND LOAN AGREEMENT AND DISCLOSURE STATEMENT

LOANS ARE ORIGINATED PURSUANT TO THE NEW MEXICO SMALL LOAN ACT OF 1955.

NATIVE AMERICAN LOAN COMPANY, INC., 1980 State Hwy 602, P.O. Box 636, Gallup, New Mexico 87305 (hereinafter "LENDER") hereby makes a loan to BORROWER(S) according to the following terms and conditions:

The purpose of this loan is for personal use.

You agree to repay to LENDER the AMOUNT FINANCED under this Loan Agreement and the FINANCE CHARGE under this Loan Agreement and a Loan Document Fee of **\$10.00**.

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your loan as a yearly rate. 156.0%	The dollar amount the credit will cost you. \$130.00	The amount of the loan provided to you or on your behalf. \$500.00	The amount you will have paid after you have made all payments as scheduled. \$640.00

YOUR PAYMENT SCHEDULE		
Number of Payments	Amount of Payments	When Payment Is Due
1	\$640.00	02/15/2012

PREPAYMENT: If you pay off early you will not have to pay a penalty. If you pay off early you will not be entitled to a refund of part of the finance charge.

Your loan is unsecured.

Your loan does not require that you carry credit disability or credit life insurance.

You agree to pay LENDER'S reasonable attorney fees and cost of collection if you do not repay this loan when it becomes due and payable. You acknowledge receipt of a filled-in copy of this Tax Refund Loan Agreement and Disclosure Statement.

Signature of Borrower N Anderson Date 12-17-11 Soc. Sec. No. _____

Signature of Borrower _____ Date _____ Soc. Sec. No. _____

NATIVE AMERICAN LOAN COMPANY, INC.

By V. C. [Signature]





NATIVE AMERICAN LOAN COMPANY, INC.

1980 STATE HIGHWAY 602
P.O. BOX 636
GALLUP, NEW MEXICO 87305

NAMES(S) OF BORROWERS	SOC. SEC. NO.
NORA ANDERSON	XXX-XX- XXXX

DATE OF LOAN	LOAN NUMBER
01/27/2012	17285

ADDRESS OF BORROWER(S)	CITY	ST.	ZIP CODE	PHONE
PO BOX 656	NAVAJO	NM	87328	5057132102

TAX REFUND LOAN AGREEMENT AND DISCLOSURE STATEMENT

LOANS ARE ORIGINATED PURSUANT TO THE NEW MEXICO SMALL LOAN ACT OF 1955.

NATIVE AMERICAN LOAN COMPANY, INC., 1980 State Hwy 602, P.O. Box 636, Gallup, New Mexico 87305 (hereinafter "LENDER") hereby makes a loan to BORROWER(S) according to the following terms and conditions:

The purpose of this loan is for personal use.

You agree to repay to LENDER the AMOUNT FINANCED under this Loan Agreement and the FINANCE CHARGE under this Loan Agreement and a Loan Document Fee of **\$10.00**.

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your loan as a yearly rate 90.0%	The dollar amount the credit will cost you \$150.00	The amount of the loan provided to you or on your behalf \$1,000.00	The amount you will have paid after you have made all payments as scheduled \$1,160.00

YOUR PAYMENT SCHEDULE		
Number of Payments	Amount of Payments	When Payment is Due
1	\$1,160.00	03/27/2012

PREPAYMENT: If you pay off early you will not have to pay a penalty. If you pay off early you will not be entitled to a refund of part of the finance charge.

Your loan is unsecured.

Your loan does not require that you carry credit disability or credit life insurance.

You agree to pay LENDER'S reasonable attorney fees and cost of collection if you do not repay this loan when it becomes due and payable. You acknowledge receipt of a filled-in copy of this Tax Refund Loan Agreement and Disclosure Statement.

Signature of Borrower X N. Anderson Date 01-27-12 Soc. Sec. No. _____

Signature of Borrower X _____ Date _____ Soc. Sec. No. _____

NATIVE AMERICAN LOAN COMPANY, INC.

By [Signature]





NATIVE AMERICAN LOAN COMPANY, INC.

1980 STATE HIGHWAY 602
P.O. BOX 636
GALLUP, NEW MEXICO 87305

NAMES(S) OF BORROWERS		SOC. SEC. NO.		DATE OF LOAN	LOAN NUMBER	
NORA ANDERSON		XXX-XX-1		01/30/2012	18459	
ADDRESS OF BORROWER(S)			CITY	ST.	ZIP CODE	PHONE
PO BOX 656			NAVAJO	NM	87328	5057132102

TAX REFUND LOAN AGREEMENT AND DISCLOSURE STATEMENT

LOANS ARE ORIGINATED PURSUANT TO THE NEW MEXICO SMALL LOAN ACT OF 1955.

NATIVE AMERICAN LOAN COMPANY, INC., 1980 State Hwy 602, P.O. Box 636, Gallup, New Mexico 87305 (hereinafter "LENDER") hereby makes a loan to BORROWER(S) according to the following terms and conditions:

The purpose of this loan is for personal use.

You agree to repay to LENDER the AMOUNT FINANCED under this Loan Agreement and the FINANCE CHARGE under this Loan Agreement and a Loan Document Fee of \$10.00.

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your loan as a yearly rate	The dollar amount the credit will cost you	The amount of the loan provided to you or on your behalf	The amount you will have paid after you have made all payments as scheduled
90.0%	\$45.00	\$300.00	\$355.00

YOUR PAYMENT SCHEDULE		
Number of Payments	Amount of Payments	When Payment is Due
1	\$355.00	03/30/2012

PREPAYMENT: If you pay off early you will not have to pay a penalty. If you pay off early you will not be entitled to a refund of part of the finance charge.

Your loan is unsecured.

Your loan does not require that you carry credit disability or credit life insurance.

You agree to pay LENDER'S reasonable attorney fees and cost of collection if you do not repay this loan when it becomes due and payable. You acknowledge receipt of a filled-in copy of this Tax Refund Loan Agreement and Disclosure Statement.

Signature of Borrower X N Anderson Date 01-30-12 Soc. Sec. No. _____

Signature of Borrower X _____ Date _____ Soc. Sec. No. _____

NATIVE AMERICAN LOAN COMPANY, INC.

By [Signature]





NATIVE AMERICAN LOAN COMPANY, INC.

1980 STATE HIGHWAY 602
P.O. BOX 636
GALLUP, NEW MEXICO 87305

NAMES(S) OF BORROWERS	SOC. SEC. NO.
NORA ANDERSON	XXX-XX-

DATE OF LOAN	LOAN NUMBER
02/04/2012	19674

ADDRESS OF BORROWER(S)	CITY	ST.	ZIP CODE	PHONE
PO BOX 656	NAVAJO	NM	87328	5057132102

TAX REFUND LOAN AGREEMENT AND DISCLOSURE STATEMENT

LOANS ARE ORIGINATED PURSUANT TO THE NEW MEXICO SMALL LOAN ACT OF 1955.

NATIVE AMERICAN LOAN COMPANY, INC., 1980 State Hwy 602, P.O. Box 636, Gallup, New Mexico 87305 (hereinafter "LENDER") hereby makes a loan to BORROWER(S) according to the following terms and conditions:

The purpose of this loan is for personal use.

You agree to repay to LENDER the AMOUNT FINANCED under this Loan Agreement and the FINANCE CHARGE under this Loan Agreement and a Loan Document Fee of **\$10.00**.

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your loan as a yearly rate 90.0%	The dollar amount the credit will cost you \$30.00	The amount of the loan provided to you or on your behalf \$200.00	The amount you will have paid after you have made all payments as scheduled \$240.00

YOUR PAYMENT SCHEDULE		
Number of Payments	Amount of Payments	When Payment is Due
1	\$240.00	04/04/2012

PREPAYMENT: If you pay off early you will not have to pay a penalty. If you pay off early you will not be entitled to a refund of part of the finance charge.

Your loan is unsecured.

Your loan does not require that you carry credit disability or credit life insurance.

You agree to pay LENDER'S reasonable attorney fees and cost of collection if you do not repay this loan when it becomes due and payable. You acknowledge receipt of a filled-in copy of this Tax Refund Loan Agreement and Disclosure Statement.

Signature of Borrower X *N. Anderson* Date 02.04.12 Soc. Sec. No. _____

Signature of Borrower X _____ Date _____ Soc. Sec. No. _____

NATIVE AMERICAN LOAN COMPANY, INC.

By *V. C. C.*





NATIVE AMERICAN LOAN COMPANY, INC.

1980 STATE HIGHWAY 602
P.O. BOX 636
GALLUP, NEW MEXICO 87305

NAME(S) OF BORROWERS	SOC. SEC. NO.	DATE OF LOAN	LOAN NUMBER
NORA ANDERSON	XXX-XX-	02/05/2012	20022

ADDRESS OF BORROWER(S)	CITY	ST.	ZIP CODE	PHONE
PO BOX 656	NAVAJO	NM	87328	5057132102

TAX REFUND LOAN AGREEMENT AND DISCLOSURE STATEMENT

LOANS ARE ORIGINATED PURSUANT TO THE NEW MEXICO SMALL LOAN ACT OF 1955.

NATIVE AMERICAN LOAN COMPANY, INC., 1980 State Hwy 602, P.O. Box 636, Gallup, New Mexico 87305 (hereinafter "LENDER") hereby makes a loan to BORROWER(S) according to the following terms and conditions:

The purpose of this loan is for personal use.

You agree to repay to LENDER the AMOUNT FINANCED under this Loan Agreement and the FINANCE CHARGE under this Loan Agreement and a Loan Document Fee of \$10.00.

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your loan as a yearly rate	The dollar amount the credit will cost you	The amount of the loan provided to you or on your behalf	The amount you will have paid after you have made all payments as scheduled
90.0%	\$30.00	\$200.00	\$240.00

YOUR PAYMENT SCHEDULE		
Number of Payments	Amount of Payments	When Payment is Due
1	\$240.00	04/05/2012

PREPAYMENT: If you pay off early you will not have to pay a penalty. If you pay off early you will not be entitled to a refund of part of the finance charge.

Your loan is unsecured.

Your loan does not require that you carry credit disability or credit life insurance.

You agree to pay LENDER'S reasonable attorney fees and cost of collection if you do not repay this loan when it becomes due and payable. You acknowledge receipt of a filled-in copy of this Tax Refund Loan Agreement and Disclosure Statement.

Signature of Borrower X *N. Anderson* Date 02.05.12 Soc. Sec. No. _____

Signature of Borrower X _____ Date _____ Soc. Sec. No. _____

NATIVE AMERICAN LOAN COMPANY, INC.

By *Km*





NATIVE AMERICAN LOAN COMPANY, INC.

1980 STATE HIGHWAY 602
P.O. BOX 636
GALLUP, NEW MEXICO 87305

NAMES(S) OF BORROWERS	SOC. SEC. NO.	DATE OF LOAN	LOAN NUMBER
NORA ANDERSON	XXX-XX-	02/12/2012	20967

ADDRESS OF BORROWER(S)	CITY	ST.	ZIP CODE	PHONE
PO BOX 656	NAVAJO	NM	87328	5057132102

TAX REFUND LOAN AGREEMENT AND DISCLOSURE STATEMENT

LOANS ARE ORIGINATED PURSUANT TO THE NEW MEXICO SMALL LOAN ACT OF 1955.

NATIVE AMERICAN LOAN COMPANY, INC., 1980 State Hwy 602, P.O. Box 636, Gallup, New Mexico 87305 (hereinafter "LENDER") hereby makes a loan to BORROWER(S) according to the following terms and conditions:

The purpose of this loan is for personal use.

You agree to repay to LENDER the AMOUNT FINANCED under this Loan Agreement and the FINANCE CHARGE under this Loan Agreement and a Loan Document Fee of **\$10.00**.

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your loan as a yearly rate	The dollar amount the credit will cost you	The amount of the loan provided to you or on your behalf	The amount you will have paid after you have made all payments as scheduled
90.0%	\$22.50	\$150.00	\$182.50

YOUR PAYMENT SCHEDULE		
Number of Payments	Amount of Payments	When Payment Is Due
1	\$182.50	04/12/2012

PREPAYMENT: If you pay off early you will not have to pay a penalty. If you pay off early you will not be entitled to a refund of part of the finance charge.

Your loan is unsecured.

Your loan does not require that you carry credit disability or credit life insurance.

You agree to pay LENDER'S reasonable attorney fees and cost of collection if you do not repay this loan when it becomes due and payable. You acknowledge receipt of a filled-in copy of this Tax Refund Loan Agreement and Disclosure Statement.

Signature of Borrower X *N Anderson* Date 02-12-12 Soc. Sec. No. _____

Signature of Borrower X _____ Date _____ Soc. Sec. No. _____

NATIVE AMERICAN LOAN COMPANY, INC.

By *V.C.C.*

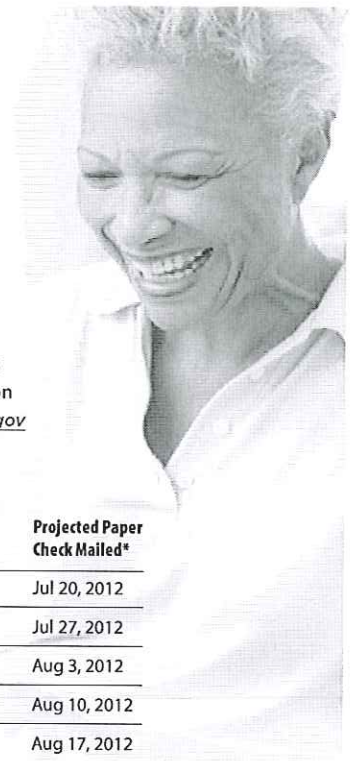




www.irs.gov/efile

2012 IRS e-file Refund Cycle Chart

Based on when your return was accepted by the IRS, the **projected date** your refund will be direct deposited or mailed is shown on the chart below. This date is based on normal processing and assumes your return does not require further review. If your return does require review and additional information is needed, you will receive a notice. For the most up-to-date information on your refund, go to www.irs.gov and click on [Where's My Refund?](#) to check on any changes to the projected date shown below.



IRS accepts your return (by 11:00 am) between...	Projected Direct Deposit Sent*	Projected Paper Check Mailed*
Jan 17 and Jan 18, 2012	Jan 25, 2012	Jan 27, 2012
Jan 19 and Jan 25, 2012	Feb 1, 2012	Feb 3, 2012
Jan 26 and Feb 1, 2012	Feb 8, 2012	Feb 10, 2012
Feb 2 and Feb 8, 2012	Feb 15, 2012	Feb 17, 2012
Feb 9 and Feb 15, 2012	Feb 22, 2012	Feb 24, 2012
Feb 16 and Feb 22, 2012	Feb 29, 2012	Mar 2, 2012
Feb 23 and Feb 29, 2012	Mar 7, 2012	Mar 9, 2012
Mar 1 and Mar 7, 2012	Mar 14, 2012	Mar 16, 2012
Mar 8 and Mar 14, 2012	Mar 21, 2012	Mar 23, 2012
Mar 15 and Mar 21, 2012	Mar 28, 2012	Mar 30, 2012
Mar 22 and Mar 28, 2012	Apr 4, 2012	Apr 6, 2012
Mar 29 and Apr 4, 2012	Apr 11, 2012	Apr 13, 2012
Apr 5 and Apr 11, 2012	Apr 18, 2012	Apr 20, 2012
Apr 12 and Apr 18, 2012	Apr 25, 2012	Apr 27, 2012
Apr 19 and Apr 25, 2012	May 2, 2012	May 4, 2012
Apr 26 and May 2, 2012	May 9, 2012	May 11, 2012
May 3 and May 9, 2012	May 16, 2012	May 18, 2012
May 10 and May 16, 2012	May 23, 2012	May 25, 2012
May 17 and May 23, 2012	May 30, 2012	Jun 1, 2012
May 24 and May 30, 2012	Jun 6, 2012	Jun 8, 2012
May 31 and Jun 6, 2012	Jun 13, 2012	Jun 15, 2012
Jun 7 and Jun 13, 2012	Jun 20, 2012	Jun 22, 2012
Jun 14 and Jun 20, 2012	Jun 27, 2012	Jun 29, 2012
Jun 21 and Jun 27, 2012	Jul 4, 2012	Jul 6, 2012
Jun 28 and Jul 4, 2012	Jul 11, 2012	Jul 13, 2012

IRS accepts your return (by 11:00 am) between...	Projected Direct Deposit Sent*	Projected Paper Check Mailed*
Jul 5 and Jul 11, 2012	Jul 18, 2012	Jul 20, 2012
Jul 12 and Jul 18, 2012	Jul 25, 2012	Jul 27, 2012
Jul 19 and Jul 25, 2012	Aug 1, 2012	Aug 3, 2012
Jul 26 and Aug 1, 2012	Aug 8, 2012	Aug 10, 2012
Aug 2 and Aug 8, 2012	Aug 15, 2012	Aug 17, 2012
Aug 9 and Aug 15, 2012	Aug 22, 2012	Aug 24, 2012
Aug 16 and Aug 22, 2012	Aug 29, 2012	Aug 31, 2012
Aug 23 and Aug 29, 2012	Sep 5, 2012	Sep 7, 2012
Aug 30 and Sep 5, 2012	Sep 12, 2012	Sep 14, 2012
Sep 6 and Sep 12, 2012	Sep 19, 2012	Sep 21, 2012
Sep 13 and Sep 19, 2012	Sep 26, 2012	Sep 28, 2012
Sep 20 and Sep 26, 2012	Oct 3, 2012	Oct 5, 2012
Sep 27 and Oct 3, 2012	Oct 10, 2012	Oct 12, 2012
Oct 4 and Oct 10, 2012	Oct 17, 2012	Oct 19, 2012
Oct 11 and Oct 17, 2012	Oct 24, 2012	Oct 26, 2012
Oct 18 and Oct 24, 2012	Oct 31, 2012	Nov 2, 2012
Oct 25 and Oct 31, 2012	Nov 7, 2012	Nov 9, 2012
Nov 1 and Nov 7, 2012	Nov 14, 2012	Nov 16, 2012
Nov 8 and Nov 14, 2012	Nov 21, 2012	Nov 23, 2012
Nov 15 and Nov 21, 2012	Nov 28, 2012	Nov 30, 2012
Nov 22 and Nov 28, 2012	Dec 5, 2012	Dec 7, 2012
Nov 29 and Dec 5, 2012	Dec 12, 2012	Dec 14, 2012
Dec 6 and Dec 12, 2012	Dec 19, 2012	Dec 21, 2012
Dec 13 and Dec 19, 2012	Dec 27, 2012	Dec 31, 2012
Dec 20 and Dec 26, 2012	Jan 3, 2013	Jan 7, 2013

Refund Inquiries

You can check the status of your refund 72 hours after IRS acknowledges receipt of your e-filed return. For the fastest information go to www.irs.gov and click on [where's my refund?](#) Or, download the free IRS2Go app to your Apple iPhone or iTouch, or Android device. IRS2Go is a new way to provide you with IRS information and tools.

***This is the projected date that the refund will be direct deposited or mailed. It may take up to 5 additional days for the financial institution to post the refund to your account, or for mail delivery.**



Publication 2043 EN/SP (Rev. 11-2011) Catalog Number 24452M
Department of the Treasury Internal Revenue Service
www.irs.gov

