STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION
FILE NO.: 04-CVS-2858

ADRIANA MCQUILLAN and
SANDRA K. MATTHIS, on behalf of
themselves and all others persons
similarly situated,
Plaintiffs,

VS.

ORDER

CHECK 'N GO OF NORTH CAROLINA, INC.;
CNG FINANCIAL CORPORTION;
JARED A. DAVIS and A. DAVID DAVIS
Defendants.

This cause coming on to be heard and being heard before the undersigned Superior Court Judge in New Hanover County Superior Court on October 31 and November 1, 2005 upon defendants' motion to compel arbitration, defendants motion to dismiss for lack of personal jurisdiction and plaintiffs motion for class certification. Upon hearing argument and reviewing briefs and the record proper, the Court makes the following findings of fact:

1. The plaintiff Adriana McQuillan is a resident of New Hanover County, North Carolina.

2. The plaintiff Sandra Matthis is a citizen and resident of New Hanover County, North Carolina.

3. The defendant CNG is an Ohio corporation with its principle place of business in Mason, Ohio.

4. Defendant Check 'N Go-NC is an Ohio corporation created by CNG and solely owned by CNG. Until March 8, 2004, Check 'N Go-NC was a North Carolina corporation. Check 'N Go-NC participates in the operation of retail payday lending establishments throughout North Carolina including two in New Hanover County, using the name "Check 'N Go."

5. Defendants Jared A. Davis and A. David Davis are residents of the Mason, Ohio, area and citizens and residents of Ohio. They own two-thirds of the stock of CNG and control the Check 'N Go enterprise. The remainder of the stock of CNG is owned by two other members of their family: their father (Allen) and their sister (Laura).

6. Prior to 1997, payday lending was illegal within the state of North Carolina.

7. Payday lending became lawful upon the 1997 enactment of former G.S. 53-281. Former G.S. 53-281 contained a July 31, 2001 expiration date or sunset.

8. After initially extending the sunset of said law by one month [North Carolina Session Law 2001-323], the General Assembly refused to renew authorization for payday lending. Legal authority for payday lending within the state of North Carolina thus expired August 31, 2001.

9. By "Urgent Memo" dated July 31, 2001, addressed to "All Check-Cashing business licenses who are engaged in "payday lending," the North Carolina Commissioner of Banks advised payday lenders that the expiration of G.S. 53-281 was eminent.

10. By "Urgent Memo" dated August 30, 2001 addressed to "All Check-Cashing business licenses now engaged in "payday lending," the North Carolina Commissioner of Banks stated that G.S. 53-281 would expire the next day and further stated: "there is no lawful basis for "payday lending" without such a law, including "payday lending" transactions effective by "agents" or "facilitators" of out of state lending institutions."

11. Check 'N Go has continued to operate its payday loan business and to offer payday loans to North Carolina customers after August 31, 2001, not withstanding the statutes expiration, by holding itself out as the agent of an out of state bank.

12. At the same time as payday lending authorization in North Carolina expired, Check 'N Go began a contractual arrangement with an out of state bank in connection with its North Carolina operations. Under this arrangement, Check 'N Go held itself out as the marketing and servicing agent of Brickyard Bank from September 2001 thru December 2002, and as the marketing and servicing agent of County Bank of Rehoboth Beach Delaware from December 2002 thru the present date.

13. The small loan business is closely regulated under North Carolina law. The North Carolina Consumer Finance Act, G.S. 53-164 et seq., assigns regulatory responsibility over the small loan business to the North Carolina Commissioner of Banks. The Commissioner of Banks also has regulatory over sight over check cashing businesses.

14. G.S. 53-166(b) provides that the requirements of the North Carolina Consumer Finance Act apply to any person who seeks to avoid its application by any devise, subterfuge or pretense.

15. G.S. 53-166(d) provides that "any contract of loan" that violates the North Carolina Consumer Finance Act (G.S. 53-164-191)" shall be void."

16. That the plaintiffs have filed this action on behalf of all persons who entered into "payday loan" transactions at the North Carolina offices of Check 'N Go at anytime after August 31, 2001, in transactions that did not purport to involve a national bank as lender.

17. Plaintiffs alleged defendants Check'N Go of North Carolina, Inc., CNG Financial Corporation, Jared A. Davis and A. David Davis operated an illegal lending business in North Carolina in violation of the North Carolina Consumer Finance Act, G.S. 53-164 et seq.; the North Carolina check cashing laws, G.S. 53-276; the North Carolina unfair trade practices laws, G.S. 75-1.1 et seq.; and the North Carolina usury laws, G.S. 24-1.1.

18. Under the Check 'N Go form of payday lending as practiced in North Carolina, a Check 'N Go customer in need of a loan writes a personal check at one of the defendants loan offices for a stated amount, and obtains a promise that the check will not be presented for payment for up to thirty days.

19. The plaintiff Adriana McQuillan obtained forty-six payday loans at the Check 'N Go location in Wilmington, North Carolina, since August 31, 2001. Each of her loans had a triple-digit annual percentage interest rate.

20. The plaintiff Sandra Matthis has engaged in approximately ten transactions at Check 'N Go stores in North Carolina. She entered into eight consecutive payday transactions at the Check 'N Go location in Kinston, North Carolina between May, 2004 and February, 2005. Each of her loans also had triple-digit annual percentage rates.

21. Check 'N Go's practice is to hold the customers' check until the due date of the loan. If the customer does not come back to pay the loan when due, Check 'N Go will deposit the check.

22. Check 'N Go's practice of holding the customers' check as security for the loan gives Check 'N Go considerable leverage over the consumer in collecting the payday debt. If a Check 'N Go customer cannot afford to pay back the loan when due and lacks the funds to cover the check if deposited by Check 'N Go, the customer is faced with a choice of having the check bounce or taking out a new payday loan for an additional fee.

23. The plaintiffs entered into numerous back-to-back loan transactions over extended periods of time. They were fearful that criminal charges would be brought against them by Check'N Go if their checks were deposited on the due date without sufficient funds in their accounts to cover them.

24. On June 6, 2002, Ms. McQuillan filled out a Credit Application for Brickyard Bank.

25. The one-page Credit Application signed by Ms. McQuillan contained a "NOTICE OF ARBITRATION AGREEMENT." The following words appear in all caps: "MANDATORY, BINDING ARBITRATION," "GIVE UP YOUR RIGHT TO GO TO COURT," "GIVE UP YOUR RIGHT TO JOIN A CLASS ACTION," "NEUTRAL ARBITRATOR," "FAIR HEARING," and "LIMITED REVIEW."

26. Ms. McQuillan did not read the Notice of Arbitration Agreement in the Brickyard Credit Application, nor did she read the Arbitration Agreement.

27. The Credit Application also provides a number to call for more information on the Arbitration Agreement, but Ms. McQuillan never availed herself of that opportunity.

28. As part of her June 6, 2002 transaction, Ms. McQuillan also entered into an Arbitration Agreement, which provides in salient part:

> With this Arbitration Agreement, the Undersigned Customer ("YOU") and Brickyard Bank (the "BANK") waive rights to litigate claims through a court before a judge or jury, and you waive rights you may have to participate in class action lawsuits. Except as provided below, those rights, including any right to a jury trial, are waived and all claims must

be resolved through arbitration. Read this Arbitration Agreement carefully before you sign the Application, this Arbitration Agreement, or the Loan Agreement.

Under this Arbitration Agreement a "Claim" is any claim, dispute or controversy of any nature under or related to the loan you obtained or will obtain from the Bank on this date (the "*Loan*") brought by either (a) the bank against you or (b) you against the Bank or the Bank's employees, agents, third party service providers or assigns – parties to whom the Bank sells your Loan – of their employees, directors, officers, owners, or affiliates. By signing this Arbitration Agreement you agree that any person against whom a Claim is asserted may elect to resolve that Claim by binding arbitration under the National Arbitration Forum ("*NAF*") rules ("*NAF Rules*"). This Arbitration Agreement applies to all Claims including whether this Arbitration Agreement is binding and enforceable. A person against whom a Claim is asserted may elect *arbitration at any time, unless a court has already delivered a final* judgment on the Claim.

29. The Arbitration Agreement also contains two pages of Arbitration Rules and Procedures, which discuss the rules and procedures related to arbitration.

30. Right above Ms. McQuillan's signature, the Arbitration Agreement states:

"PLEASE GO BACK AND READ THE ARBITRATION AGREEMENT CAREFULLY. IT LIMITS CERTAIN OF YOUR RIGHTS, INCLUDING YOUR RIGHT WHEN AND WHERE TO BRING A COURT ACTION. BY SIGNING YOUR LOAN AGREEMENT, YOU ACKNOWLEDGE THAT YOU HAVE READ AND RECEIVED A COPY OF THE ARBITRATION AGREEMENT AND AGREE TO BE BOUND BY ALL OF THE TERMS OF THE ARBITRATION AGREEMENT AND LOAN AGREEMENT."

31. *Ms. McQuillan entered into a total of thirteen payday loan* transactions with Brickyard Bank, each time voluntarily signing Loan documents similar to those she signed as part of her June 6, 2002 transaction, including Arbitration agreements.

32. On December 5, 2002, Ms. McQuillan filled out a Loan Application for a loan transaction with County Bank. On May 10, 2004, Ms. Matthis filled out a County Bank Loan Application.

33. Among other things, the Loan Applications contained an Agreement to Arbitrate All Disputes and Agreement Not to Bring, Join, or Participate in Class Actions. Ms. McQuillan and Ms. Matthis testified that they did not read these provisions in the Loan Application.

34. The Loan Application provided a number for customers to call with any questions they had about the applications, but neither Ms. McQuillan nor Ms. Matthis called the number provided on the application.

35. Following approval of their Loan Applications Ms. McQuillan and Ms. Matthis each entered into Loan transactions with County Bank.

36. As part of their transactions, both Ms. McQuillan and Ms. Matthis signed Loan Note and Disclosure Agreements, which identified the "Parties" as follows: "In this Loan Note and Disclosure ('Note') you are the person named as the Borrower above. We are the lender, County Bank of Rehoboth Beach, Delaware."

37. Under Governing Law, the Loan Note and Disclosure Agreements provide: "This Note is governed by Delaware law, except as federal laws may apply."

38. The County Bank Loan Note and Disclosure Agreements also contain an arbitration provision, which states in pertinent part:

> **AGREEMENT TO ARBITRATE ALL DISPUTES: You and we agree that any and all claims, disputes or controversies between you and us and/or the Company [defined as Check 'N Go], any claim by either of us against the other or the Company (or the employees, officers, directors, agents or assigns of the other or the Company) and any claim arising from or relating to your application for this loan or any other loan you previously, now or may later obtain from us, this Loan Note, this agreement to arbitrate all disputes, your agreement not to bring, join or participate in class actions, regarding the collection of the loan, alleging fraud or misrepresentation, whether under the common law or pursuant to federal, state or local statute, regulation or ordinance, including disputes as to matters subject to arbitration or otherwise, shall be resolved by binding individual (and not joint) arbitration by and under the Code of Procedure of the National Arbitration Forum ("NAF") in effect at the time the claim is filed. This agreement to arbitrate all disputes shall apply no matter by whom or against whom the claim is filed. Rules and forms of the NAF may be obtained and all claims shall be filed at any NAF office, on the**

World Wide Web at www.arb-forum.com, by telephone at 800-474-2371, or at "National Arbitration Forum, P.O. Box 50191, Minneapolis, Minnesota 55405." Your arbitration fees may be waived by the NAF in the event you cannot afford to pay them. The cost of any participatory, documentary or telephone hearing, if one is held at your or our request, will be paid for solely by us as provided in the NAF Rules and, if a participatory hearing is requested, it will take place at a location near your residence. This arbitration agreement is made pursuant to a transaction involving interstate commerce. It shall be governed by the Federal Arbitration Act, 9 U.S.C. Section 1-16. Judgment upon the award may be entered by any party in any court having jurisdiction.

NOTICE: YOU AND WE WOULD HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE DISPUTES THROUGH A COURT AND HAVE A JUDGE OR JURY DECIDE THE DISPUTES BUT HAVE AGREED INSTEAD TO RESOLVE DISPUTES THROUGH BINDING ARBITRATION.

39. With respect to class actions, the Arbitration agreements state "you agree that you will not bring, join, or participate in any class action as to any claim, dispute, or controversy you may have against us, our employees, officers, directors, services, and assigns."

40. Immediately above their signatures, in all capital letters, the agreements state: "BY SIGNING BELOW, YOU AGREE TO ALL THE TERMS OF THIS NOTE, INCLUDING THE AGREMENT TO ARBITRATE ALL DISPUTES AND THE AGREEMENT NOT TO BRING, JOIN, OR PARTICIPATE IN CLASS ACTIONS. YOU ALSO ACKNOWLEDGE RECEIPT OF A FULLY COMPLETED COPY OF THIS NOTE."

41. The Loan Note and Disclosure Agreements also provided the following Notice in all capital letters: "YOU MAY KEEP THIS NOTE, WITHOUT SIGNING IT, IF YOU STILL WANT TO SHOP ELSEWHERE FOR CREDIT."

42. Ms. McQuillan entered into approximately thirty-three transactions with County Bank that were serviced by Check 'N Go, each time voluntarily signing an Arbitration Agreement. Ms. Matthis entered into approximately ten transactions with County Bank that were serviced by Check 'N Go, each time voluntarily signing an Arbitration Agreement.

43. Check 'N Go has not been a party to any arbitration proceeding before the NAF. Prior to this lawsuit, Check 'N Go has not been sued by any North Carolina consumers.

44. Defendants have stated, in response to any interrogatory, that they are not aware of any arbitration claims filed in North Carolina in which any of the defendants were parties.

45. Defendants have stated, in response to an interrogatory, that they are not aware of any arbitration claims filed in North Carolina in which the banks with which Check 'N Go has had a contractual relationship with parties. Defendants have submitted an affidavit executed on February 21, 2003, and captioned in another case, in which the president of County Bank of Rehoboth Beach, Delaware, the bank with which Check 'N Go has contracted, stated "over the past few years" two consumers, in the entire country had filed arbitration claims against the bank. These arbitration proceedings do not appear to have had anything to do with the defendants, and Check 'N Go's contractual arrangement with County Bank of Rehoboth Beach, Delaware, had commenced only two months prior to this February, 2003 affidavit.

46. The Court finds that no arbitration claims have ever been filed with respect to the Check 'N Go's North Carolina business operations.

47. The Court notes that the interrogatory responses in *Kucan v. Advance America* and *Hager v. Check Into Cash*, cases nos. 04-CVS-2860 and 04-CVS-2859, likewise show that there have been no arbitration proceedings arising out of those North Carolina businesses.

48. Plaintiffs offered the affidavit testimony of twenty-two attorneys as well as deposition testimony of nineteen of those attorneys, who each offered their opinion it was unlikely an individual, proceeding on an individual (non-class) basis, would be able to obtain legal counsel to prosecute claims into Check Into Cash.

49. That the defendants prior to hearing moved to strike the affidavits and testimony of the attorneys Gardmer, Wimer, and Whalen along with the affidavit of Sabrina Smith. These individuals represented proposed attorney experts who were not deposed under the order of the Court providing for depositions of the plaintiffs affiants. The Court additionally finds they have not had the opportunity to be cross examined through a deposition, that the motion is allowed and their testimony and affidavit shall not be considered. That the defendants further move to strike the affidavits and include testimony of the

plaintiffs proposed attorney experts Rossmans and Barnes. The Court finds these individuals in fact submitted to depositions. Finding that neither of these attorneys have conducted any study of the practice of consumer law within this state, and that neither practices law within this state, the Court finds their opinions are not relevant and the motion to strike is allowed. Their affidavits and depositions are not considered herein.

50. That the Court otherwise admits and considers the affidavits and depositions of the remaining proposed attorney experts. The Court otherwise considers the defendants arguments in the motion to strike in determining the weight to be given to the testimony proffered through these attorneys.

51. Each of the before mentioned attorneys accepted as experts has offered his/her opinion that because the stakes of an individual arbitration on behalf of a payday borrower are so small, no attorney would represent a payday borrower claim on an individual basis. They further state t this is true despite the availability of statutory attorney fees under N.C.G.S. 75-1.1 et seq.

52. At least one of the attorneys submitting an affidavit in support of the plaintiffs argument, to wit Catherine S. Parker Lowe represented an individual consumer in Britt v. Jones , 123 N.C. App.108,472S.E.2d 199 (1996). In that case Ms. Lowe's representation of the individual consumer involved allegations that the consumer paid usurious interest in connection to loans made to her. In that matter Ms. Lowe received a trebling of damages award under the unfair trade practices claim and $4,100 in attorneys fees.

53. That the arbitration agreements and class action waivers do not prevent the plaintiff's and others similarly situated from procuring adequate legal representation.

54. Included with their materials offered into evidence in opposition to the defendant's motion to compel arbitration are a number of plaintiff's proposed exhibits. Defendants objected to the introduction of said exhibits. The exhibits include:

a. Exhibit 15: deposition testimony of Edward C. Anderson, managing director of the National Arbitration Forum (NAF) in *Toppings v.Meritech Mortgage Services, Inc.*, litigation from West Virginia.

b. Exhibit 16: deposition testimony of Mr. Anderson in the *Hubbert v. Dell Corp.* litigation in Illinois State Court.

c. Exhibit 17: the affidavit of F. Paul Bland, counsel for the plaintiffs in the *Toppings* case, wherein he swears to the validity of several attachments to that affidavit obtained from NAF in other litigation.

d. Exhibit 18: a letter from Curtis D. Brown, Vice-President and General Counsel of NAF, to a third party not involved in this lawsuit.

e. Exhibit 19: a letter from Roger S. Haydock, director of arbitration of the NAF, to a third party not involved in this lawsuit.

f. Exhibit 21: undated, unsigned document with testimonials about the NAF.

g. Exhibit 22: undated, unsigned document from the NAF containing a list of companies and individuals.

h. Exhibit 27: deposition excerpt of an individual named Clinton W. Walker that was not taken in this proceeding, and does not identify the proceeding in which that matter was pending or who Mr. Walker is.

55. The Court finds all of these exhibits to contain hearsay testimony for which no exception has been shown. Accordingly the Court strikes and does not consider the aforementioned exhibits.

56. Additionally, noting the plaintiffs argue the above exhibits illustrate extreme bias of the NAF in support of their argument the Arbitration agreements are unconscionable, the Court takes judicial notice that N.C.G.S. 1-569.23 states: (a) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if: (1) The award was procured by corruption, fraud, or other undue means; (2) There was a. Evident partiality by an arbitrator appointed as a neutral arbitrator; b. Corruption by an artibrator; or c. Misconduct by an arbitrtor prejudicing the rights of a party to the arbitration proceeding; . . . . . (4) An arbitrator exceeded the arbitrator's powers; (5) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under G.S. 1-569.15(c) no later than the beginning of the arbitration hearing. (b) A motion under this section shall be filed within 90 days after the moving party receives notice of

the award pursuant to G.S. 1-569.19 or within 90 days after the moving party receives notice of a modified or corrected award pursuant to G.S. 1-569.20, unless the moving party alleges the award was procured (emphasis added) by corruption, fraud, or other undue means, in whick case the motion shall be madewith 90 days after the ground is known, or by the exercise of reasonabale care would have been known, by the moving party.

57. N.C.G.S. 1-569.23(c) then directs the court, if finding one of the aforementioned grounds exists to set the matter for rehearing before the same or a new arbitrator.

BASED UPON THE FOREGOING FINDINGS OF FACT, THE COURT CONCLUDES AS A MATTER OF LAW:

1. As this case is between North Carolina plaintiffs, a corporation incorporated under the laws of Ohio but with its principle place of business in Ohio, an Ohio corporation which was formerly an North Carolina corporation but operates within North Carolina, and two individual citizens and residents of Ohio, involving payday loan transactions all taking place within the state of North Carolina, the law of North Carolina governs this dispute. The choice of law provisions of the contracts are invalid.

2. North Carolina has a strong public policy in favor of arbitration. Both North Carolina and Federal law establish that any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration. Arbitration language in consumer agreements that is clear and plain view must be recognized and enforced.

3. The transactions forming the basis of the plaintiff's complaint involve interstate commerce within the meaning of the Federal Arbitration Act.

4. That as the arbitration clauses utilized by Check'N Go defines "dispute" and "disputes" as all disputes and in the broadest possible meaning, the dispute involved in this matter was contemplated and is covered by the Arbitration Agreement.

5. That section 2 of the Federal Arbitration Act, governing arbitration agreements, provides that an arbitration provision "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. Section 2.

6. That North Carolina law has adapted a two-prong analysis to determine whether a dispute is subject to arbitration, whereby "the Court must ascertain both (1) whether the parties had a valid agreement to arbitrate, and also (2) whether "the specific dispute falls within the substantive scope of that agreement." Eddings v. S. Orthopaedic & Musculoskeletal Associates, 2004 N.C. App. LEXIS 2330, 605 S.E.2d 680, (2004).

7. In signing the consumer loan agreements which form the basis of the complaint the plaintiffs entered into valid agreements to arbitrate their respective claims against Check'N Go under the Federal Arbitration Act.

8. Where, as here, arbitrational language is clear and conspicuous, and a party has signed the contract in question, an agreement to arbitrate that is contained in a larger contract does not require "separate negotiation" of the arbitration clause or provision.

9. The claims asserted by the plaintiffs in their complaint arise out of the loan agreements and fall squarely within the arbitration agreements and the agreements' broad definition of dispute.

10. The analysis of the arbitration agreements, separate from the loan agreements, is required by the "severability doctrine" announced in Prima Paint 388 U.S. 395(1967).

11. That while N.C.G.S 53-166 provides that any contract of loan violating the provisions of that article shall be void, the analysis of the arbitration agreement separate from the loan agreement is required by the "severability doctrine" announced in Prima Paint, 388 U.S. 404. Under current North Carolina law the loan agreements themselves cannot form the basis of a "unconscionability" or "voidness" attack on the arbitration agreements. The Prima Paint severability doctrine, as adopted by the N.C. Court of Appeals in Eddings v. Southern Orthopaedic, 2004 N.C.App LEXIS 2330, 605 S.E.2d 680, (2004), limit the Court's role to reviewing the arbitration agreement only. The Court may not consider a challenge to the parties contract as a whole.

12. Plaintiffs argument that the parties loan agreement was void *ab initio* as illegal under N.C. law and specifically under N.C.G.S. 53-166, does not relate specifically to the arbitration agreement itself, nor does it relate to a claim that the plaintiff failed to assent to the terms of the agreement.

13. Despite the obvious language of N.C.G.S. 53-166(d), the claim that the contract is *void ab* initio, under Prima Paint and Eddings is reserved for the arbitrator. Thus that claim cannot serve as a basis to uphold denial of a motion to compel arbitration.

14. That as the loan agreement between the parties and the arbitration agreements do not limit any of the substantive remedies (including attorney fees, treble damages and restitution) available to the plaintiffs, and as the arbitration agreements cannot and do not prevent state agencies from intervening on behalf of North Carolina consumers, the plaintiffs argument that the arbitration agreements act as an exculpatory clause fails. Plaintiff's argument that the Arbitration agreementss effectively insulate Defendants from accountability ignores the fact that the statutes under which the Plaintiffs sue specifically provide for actions by the Attorney General although the Court does note no action has been brought by the Attorney General *to date against these defendants.*

15. That as the arbitration agreements do not limit the claims plaintiffs may assert nor the remedies and damages they may seek, including a award of counsel fees, argument that arbitration is prohibitively costly in this case fails.

16. That a waiver of class action is neither unconstitutional nor unconscionable. The United State Supreme Court has recognized class *actions are procedural mechanisms, not substantive rights.* Gilmer v. Interstate/Johnson Lane Corp., 500 U.S.20, 32(1991).

17. In this instance, plaintiff's argument that the arbitration agreements and waiver of class action rendered them unable to secure representation by competent counsel fails and the Court finds the agreements not to be unconscionable for those reasons.

18. That a waiver of a right to a trial by jury under North Carolina law does *not render an arbitration agreement unconscionable.*

19. Plaintiffs have failed to establish that the Arbitration Agreements are either procedurally or substantively unconscionable.

20. That Plaintiff's proposed exhibits 15, 16, 17, 18, 19, 21, 22, and 27 constitute inadmissible hearsay and should be excluded and not considered by the Court. Absent any other believable evidence as to the bias of the National Arbitration Forum, Plaintiff's claims of *unconscionability due to bias fail.*

21. Even if the Plaintiffs had competent evidence of bias on the part of the NAF and/or its' arbitrators, under the provisions of N.C.G.S. 1-569.23, their claims of bias are premature.

22. That as the parties in each instance had a valid agreement to arbitrate and as the specific disputes alleged fall within the substantive scope of the respective agreements, the Federal Arbitration Act applies.

23. That as the agreements are not otherwise invalid under North Carolina law applicable generally to contracts, the arbitration agreements and class action waivers are valid.

24. That as each of the named defendants in this matter are beneficiaries under valid and enforceable agreements to arbitrate, each of them individually and as a group has the right to enforce the arbitration agreements under North Carolina law.

IT IS NOW, THEREFORE, ORDERED, in accordance with the foregoing findings of fact and conclusions of law:

1. That the defendant's motion to stay these proceedings and compel arbitration is granted. The proceedings in this matter are hereby stayed pending judicial approval of a final and binding arbitral decision.

2. That the class action waiver is declared valid under North Carolina law.

3. Further, having concluded the Arbitration Agreements and class action waiver are valid, the plaintiff's motion for class certification is denied.

4. In accordance with the prior order of this court scheduling the matters for hearing, the defendants motion to dismiss for lack of personal jurisdiction are reserved for arbitration and are not ruled upon by this Court.

This the 30th day of December, 2005.

D. Jack Hooks, Jr., Judge Presiding