IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA.

CASE NO.: 96-5098-CA
DIVISION: CV-A

ANNIE R. CHURCHWELL, on behalf of herself and others similarly situated,

PLAINTIFF,

v.

NATIONAL TITLE LOAN, INC.,

DEFENDANT.
_____/

ORDER CERTIFYING CLASS

This cause came before the Court for a hearing on the Plaintiff's Motion for Class Certification.[1] The Court heard argument of counsel and considered memoranda submitted by them.

The Court finds that:

(a) The Plaintiff's Amended Complaint alleges the Defendant, a title loan company, violated the Truth in Lending Act and the Florida Deceptive and Unfair Trade Practices Act by, among other things, using a Contract for Title Pledge form which improperly assessed fees and

[1] The style of the initial Complaint and the Amended Complaint names only Annie Churchwell as a proposed representative party. The text of the Amended Complaint however, names Michael Barth as an additional proposed representative party. The January 7, 1997, Order [Dismissing Complaint with Leave to Amend] entered by a predecessor judge does not grant the Plaintiff leave to add an additional party. On January 27, 1997, Plaintiff Churchwell filed a Motion to Add Party [Mr. Barth] but no order has been entered on that motion. The Court, in ruling upon the Motion for Class Certification, therefore disregards all allegations in the Amended Complaint regarding Mr. Barth.

interest and failed to make necessary financial disclosures to consumers. The Plaintiff seeks to have certified a class of persons who: (i) entered into a Contract for Title Pledge with the Defendant, National Title Loan, Inc. (ii) where the signature line of the Contract bears the signature of one identified as an employee of National Title Loan, Inc. *See* [Plaintiff's] Memorandum in Support of Plaintiff's Motion for Class Certification at 1, n.1.

(b) The proposed class satisfies the numerosity, commonality, typicality and adequacy of representation requirements of Rule 1.220(a), Fla. R. Civ. P.

(i) *Numerosity:* At the hearing, counsel for the Defendant conceded and the Court finds that, because there are several hundred potential class members, the numerosity requirement is satisfied.

(ii) *Commonality:* Ms. Churchwell's claims involve issues of both law and fact common to the claims of members of the proposed class. It is not necessary that Ms. Churchwell's claims be *identical* to those of others in the proposed class. *See* Order in *Daniels v. First Union National Bank of Florida*, no. 94-125-Civ-J-20 (United States District Court for the Middle District of Florida, entered December 14, 1995) at p. 11 ("This [commonality] provision does not require a complete identity of legal claims"). It is only necessary that all class members be in a "substantially identical factual situation" and that the questions of law raised by the representative plaintiff apply to each class member. *Id.* In the present case, all members of the proposed class entered into a title loan transaction with the Defendant by signing the same form of Contract Title Pledge. They thus share a substantially identical factual situation.

The questions of law raised by the Plaintiff -- the compliance of the form with federal and Florida law, the existence of any damages which might flow from any violation of such law, the

entitlement to a temporary and/or permanent injunction against application and enforcement of Florida's title loan statute and the constitutionality of that statute -- apply to each class member. Concededly, the *dollar amount* of any actual damages (as opposed to statutory damages), if any, owed by the Defendant to various class members may differ but the *entitlement* to such damages as a consequence of any violation of state and/or federal law is a unitary, shared issue, as is the determination of the appropriate *method* of calculation of any such damages.

Commonality exists when the class shares "at least one issue whose resolution will affect all or a significant number of the putative class members." *Stewart v. Winters*, 669 F.2d 328, 335 (5th Cir. 1982), *cited approvingly by Daniels* at 11. Numerous shared issues in this case will affect all or a significant number of the putative class members.

(iii) *Typicality:* Ms. Churchwell's claims are typical of the claims of the members of the proposed class. The Contract for Title Pledge form she signed is the same form signed by other members of the proposed class. Further, the Defendant used a single computer program to determine and assess interest, fees and other charges in connection with its consumer title loan transactions. Ms. Churchwell's interests arise from the same course of conduct which gives rise to the claims of the class which she seeks to represent. Her claim is founded on the same three legal and remedial theories as would be the claims of the class members: violations of the Truth-in-Lending Act; violations of the Florida Deceptive and Unfair Trade Practices Act; and declaratory relief under the Declaratory Judgment Act.

(iv) *Adequacy of representation:* At the hearing, counsel for the Defendant conceded, and the Court finds, that the adequacy of representation requirement is satisfied.

(c) The proposed class satisfies the requirements of Rule 1.220 under subsections (b)(1),

(b)(2) and (b)(3).

(i) *Subsection (b)(1)*: The prosecution of multiple individual claims involving the same type of transaction and the same form of document (Contract for Title Pledge) necessarily involves the risk of inconsistent or varying adjudications concerning individual members of the class. Although the Defendant no longer uses the particular form of Contract for Title Pledge which is at issue in this case, inconsistent or varying adjudications as to the compliance of that form with federal and state law would provide conflicting direction to the Defendant as to whether it might permissibly elect to again use that form.

Further, denial of class certification in favor of prosecution of separate claims would substantially impair or impede the ability of other similarly-situated persons to protect their interests. In this case, any damages recoverable, whether actual or statutory, are likely to be relatively limited in amount, making the maintenance of individual claims cost-prohibitive and making it highly unlikely that individual plaintiffs would meet with success in retaining counsel. The inability to retain counsel is particularly significant where, as here, the claims arise from complex federal and state statutes and are not ones which can effectively be pursued by *pro se* litigants. When access to the courts cannot feasibly be obtained because of cost considerations, justiciable issues capable of repetition may never be litigated.

(ii) *Subsection (b)(2)*: Ms. Churchwell seeks declaratory and injunctive relief in two of the three counts of her Amended Complaint.[2] Where, as here, the representative party seeks substantial and meaningful declaratory and injunctive relief on the basis of a classwide business practice, a class may be certified under subsection (b)(2) of the rule even though damages are also

---

[2] Counts II and III.

sought. *Cf. Cox v. American Cast Iron Pipe Co.*, 748 F.2d 1546, 1554 (11th Cir. 1986) and *Patrykus v. Gomila*, 121 F.R.D. 357, 363 (N.D. Ill. 1988)(certification appropriate under subsection (b)(2) of the similar federal rule of civil procedure where "[d]eclaratory and injunctive relief are sought as an integral part of the relief for the entire class.") Where monetary damages and declaratory/injunctive relief are sought, the court may try the action as a "hybrid action" in two stages. In the first stage, the Court determines whether the challenged form satisfies the requirements of applicable federal and state law. If it does, there is no second stage. If it does not, then the Court determines entitlement to declaratory, injunctive and related relief and, in the second stage, the finder of fact determines class members' entitlement to and the amount of any monetary damages. *Cf. Simon v. World Omni Leasing, Inc.*, 146 F.R.D. 197, 202 (S.D. Ala. 1992).

The Amended Complaint alleges that the Defendant acted on grounds generally applicable to all members of the proposed class, *i.e.*, that the Defendant used the same form and followed the same business practices with all class members. Under such allegations, final injunctive relief or declaratory relief concerning the class may properly be sought and a class action format is appropriate. *See W.S. Badcock Corp. v. Myers*, 696 So. 2d 776, 780 (Fla. 1st DCA 1996)(certification of class under subsection (b)(2) affirmed; action founded on alleged violations of Truth in Lending Act and Florida Deceptive and Unfair Trade Practices Act).

(iii) *Subsection (b)(3)*: Even if this action could not be maintained as a class action under subsection (b)(1) or (b)(2), it could be maintained as a class action under subsection (b)(3). The questions of law and fact common to the claim of the representative party and the claims of the class members predominate over any questions of law or fact affecting only individual members of

the class. Further, class representation is superior to the other available methods for the fair and efficient adjudication of the controversy.

Counsel for the Defendant has capably outlined in his memorandum of law and at the hearing on the motion the issues of fact and law which may differ among class members. Most have to do with the entitlement of a particular class member to recover damages, *e.g.*, statute of limitation issues, or with the calculation of any damages to which the class member might be entitled. The Court acknowledges that no two class claims will be identical but such is not required for certification to be appropriate.

The Court also acknowledges that the parties disagree as to whether certain potential counterclaims are compulsory counterclaims which must be asserted in this action and which would further serve to distinguish one class member's claim from another's; however, as the Honorable Harvey Schlesinger noted in the *Daniels* opinion at 15, "The presence of counterclaims that are no more than for debt collection...does not necessarily defeat class certification for want of commonality...." Further, as Judge Schlesinger also noted, when the facts of a class action are more fully developed, the Court -- if it concludes that counterclaims make management of the Plaintiffs' class claims unwieldy -- may issue a supplemental order severing the class into subclasses or appointing a special master to hear the counterclaims. *Id. See also W.S. Badcock Corp. v. Myers*, 696 So. 2d 776, 780 (Fla. 1st DCA 1996)("[T]he possibility of counterclaims or defenses as to delinquent amounts does not preclude resolution of an issue common to all class members in a single trial.").

Significantly, and as observed by Judge Schlesinger in *Daniels*, where the cause of action arises out of a single type of contract that is virtually, if not completely, identical in each

transaction, common questions of law and fact abound. *Daniels* at 16, *citing Durrett v. John Deere Co.*, 150 F.R.D. 555, 558 (N.D. Tex. 1993).

The issues raised by the claims of the class members are better addressed in a single action rather than in multiple actions.[3] Certifying a class will result in a single outcome rather than in multiple, potentially-conflicting outcomes and will enhance access to the courts by providing a forum for viable claims which would otherwise likely never be asserted because the damages potentially recoverable in an individual action would be less than the cost of litigating that action. Class representation is therefore superior to other available methods for the fair and efficient adjudication of the controversy.

(d) Because the governing rule appears to contemplate that a class will be certified under only a single subsection of the rule[4] even where more than one subsection applies, the Court elects to treat this class as one certified under subsection (b)(2) of Rule 1.220, Fla. R. Civ. P.

ACCORDINGLY, it is **ORDERED** and **ADJUDGED** that:

(1) Plaintiff's Motion for Class Certification is granted and a single class is hereby certified, pursuant to Rule 1.220(b)(2), Fla. R. Civ. P. Class members are defined as those persons who: (i) entered into a Contract for Title Pledge with the Defendant, National Title Loan, Inc. (ii) where the signature line of the Contract bears the signature of one identified as an employee of National Title Loan, Inc.

(2) Plaintiff's counsel shall provide class members notice of the pendency of this action as

---

[3] Already, four individual actions have been filed against the Defendant in this circuit alleging substantially facts and raising substantially similar issues of law.

[4] Thus determining what type of notice must be afforded to class members, *see* Rule 1.220(b)(1) and (d)(1), Fla. R. Civ. P.

follows:

(i) Notice shall be furnished by United States mail to each class member who can be identified and located through reasonable effort.

(ii) Notice shall be furnished by publication to class members who cannot be identified and located through reasonable effort. The notice shall be published for ten consecutive days in a newspaper of general circulation or general business circulation in the Jacksonville, Florida area. If the chosen newspaper does not publish on weekends, the publication shall be for ten consecutive business (Monday through Friday) days. The notice provided by publication shall be identical to that provided to identified class members.

(iii) All notices to identified class members shall be mailed simultaneously. Publication of notice to other class members shall commence on the day notices are mailed to identified class members.

Counsel shall confer regarding the date on which notice is to be mailed and publication commenced; if counsel are unable to agree on an appropriate date, the Court, upon application, will determine the date.

(iii) Each notice shall inform each class member that (A) any member of the class who files a written statement in this case with the Clerk of the Court of the Fourth Judicial Circuit by a date certain [which shall be sixty days from the date of mailing/commencement of publication] asking to be excluded shall be excluded from the class; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may make a separate appearance within the sixty-day period referred to in (A) above.

(iv) Notice of any proposed voluntary withdrawal, dismissal or compromise of the class action shall be given to all members of the class. Any proposed voluntary withdrawal, dismissal or compromise of the class action requires court approval.

(v) The cost of providing notice to class members shall initially be borne by the Plaintiff but, under appropriate circumstances, may be taxed against the Defendant at the conclusion of the case.

DONE and **ORDERED** this 2 day of Dec, 1997, in Jacksonville, Florida.

ORDER ENTERED

DEC 0 2 1997

/S/ KAREN K. COLE

Circuit Judge

Copies to:

Lynn Drysdale, Esquire
P. Campbell, Esquire

Auto Title Loan
CoC/TILA

FLORIDA LEGAL SERVICES, INC.
JACKSONVILLE OFFICE
219 Newnan Street
Jacksonville, Florida 32202
(904) 355-5200

TELECOPIER TRANSMITTAL

TO: Elizbeth Renuart

FROM: Lynn Drysdale

FIRM:

RE: Title loans

FAX NUMBER: (202) 463-9462

REPLY NEEDED BY:

DIRECT DIAL: (904) 355-5200
(904) 356-8371, EXT. 306

MESSAGE:

Elizabeth, Nice to talk with you again. Sorry to babble so. I have attached

the TILA class order

the NTL pre and post "TILA fix"

the contract used by Title Loans of America, Inc (the Florida version) (contains arbitration clause

Kevin Byers research compilation regarding TIofA

Let me know if I forgot something.

Thanks again.

(Also a letter from a local admiral I may have already sent this)

DATE: 12/16/98 TIME: OPERATOR:
TOTAL NUMBER OF PAGES: 4 (INCLUDING THIS COVER LETTER)
ORIGINAL DOCUMENT WILL ~~X~~ WILL NOT ~~X~~ FOLLOW BY MAIL.